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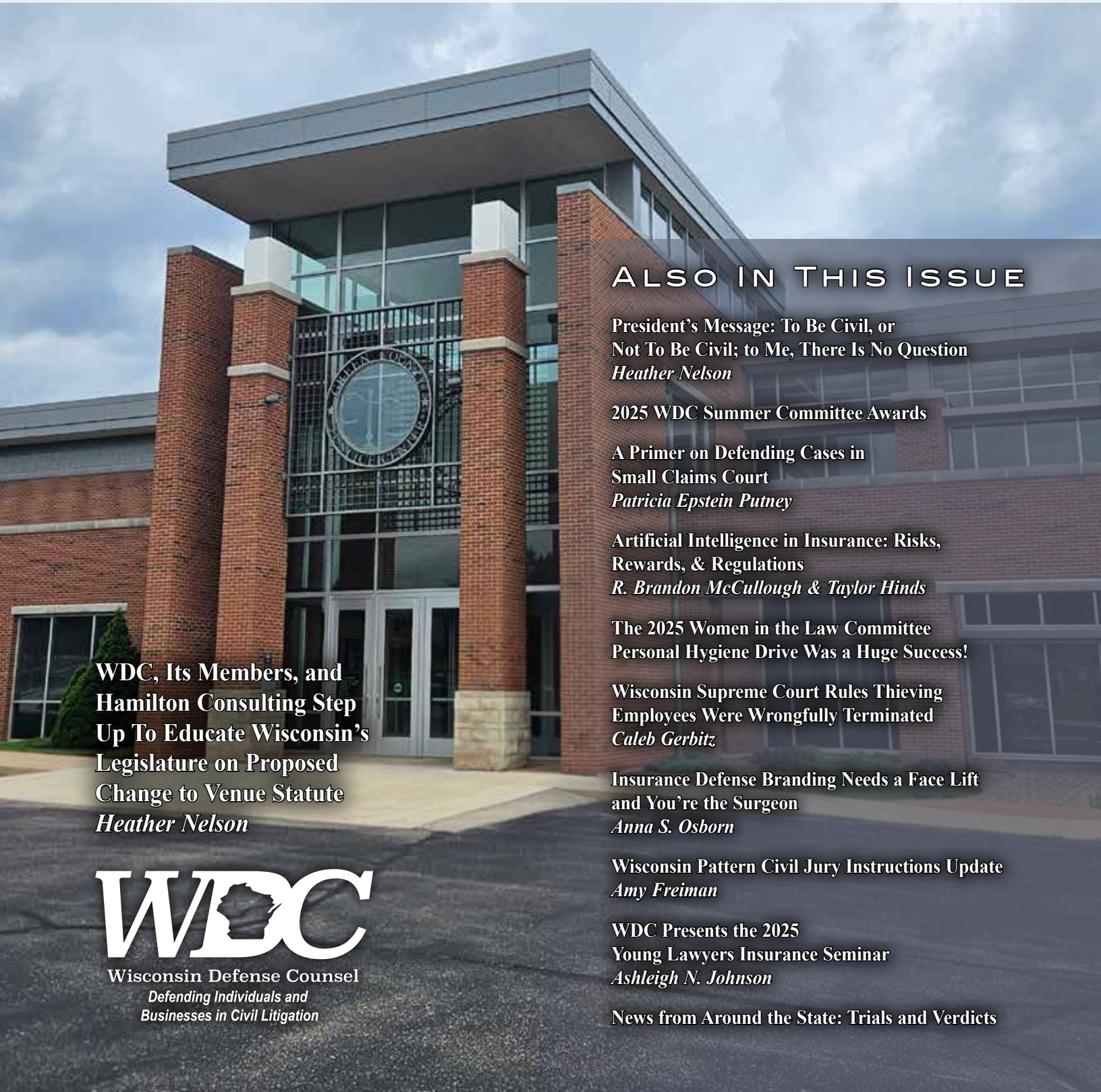

WDC, Its Members, and Hamilton Consulting Step Up To Educate Wisconsin's Legislature on Proposed Change to Venue Statute
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Wisconsin Defense Counsel
Defending Individuals and Businesses in Civil Litigation

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Wisconsin Defense Counsel

Defending Individuals and Businesses in Civil Litigation

In This Issue…

Journal Policy

WDC Members and other readers are encouraged to submit articles for possible publication in the *Wisconsin Civil Trial Journal*, particularly articles of use to defense trial attorneys. No compensation is made for articles published and all articles may be subjected to editing.

Statements and expression of opinions in this publication are those of the authors and not necessarily those of the WDC or Editor. Letters to the Editor are encouraged and should be sent to the WDC office at 6737 W. Washington St., Suite 4210, Milwaukee, WI 53214. The Editor reserves the right to publish and edit all such letters received and to reply to them.


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WDC: The Voice of the Wisconsin Defense Bar

Wisconsin Defense Counsel ("WDC") is a premier statewide organization consisting of more than 375 defense attorneys. Founded in 1962, WDC (formerly known as the Civil Trial Counsel of Wisconsin) is dedicated to defending Wisconsin citizens and businesses in a professional manner, maintaining an equitable civil justice system, educating its members, creating referral sources for its members, providing networking opportunities for its members, and influencing public policy. To be eligible for membership, WDC bylaws require that an individual be a member of the State Bar of Wisconsin and "devote a substantial portion of his or her professional time in the defense of civil litigation."

WDC Mission, Vision, and Values

Our Mission: Wisconsin Defense Counsel exists to promote and protect the interests of civil litigation defense attorneys and their clients by providing professional education and development, fostering collegiality, promoting principles of diversity and inclusion and striving to ensure equal access to justice for all defendants.

Our Vision: Delivering superior legal services with integrity and professionalism.

Our Values: Educate; Diversity & Inclusion; Collegiality; Integrity; Development; and Service.

WDC Benefits of Membership

Education: WDC holds three education programs during the year, all of which provide continuing legal education (CLE) credits.

Expert Witness & Deposition Requests: Members can find expert witnesses or copies of depositions in various subject fields by using the knowledge and experience of other members. Requests are sent by broadcast email to all WDC members.

Web Resources: Members are included in a searchable database on the WDC website. Members can also obtain all the seminar outlines that are presented at WDC educational events online. These outlines are a quick and easy way to get access to the latest information on various topics.

... and so much more!

President's Message: To Be Civil, or Not To Be Civil; to Me, There Is No Question

by: Heather Nelson, President, Wisconsin Defense Counsel

"Wisconsin Defense Counsel - defending individuals and businesses in civil litigation." While not all attorneys find themselves in adversarial situations, by the nature of our business, our members usually find ourselves in conflict with another party from the get-go. Various resources (including, to my chagrin, artificial intelligence) define "adversarial" as: involving or characterized by conflict or opposition; individuals, groups, or systems in direct opposition to each other, often with the intent to compete, challenge, or even harm. Is there room for civility in such a charged, competitive environment? Not only is there room for it; it is essential.

Wisconsin's Rules of Professional Conduct for Attorneys include provisions requiring candor toward the tribunal (SCR 20:3.3), essentially requiring that lawyers not make false statements of fact or law, omit relevant legal authority or offer false evidence to the Court. SCR 20:3.4 sets forth parameters to ensure "fairness" to opposing parties and counsel. By way of example, this rule requires attorneys to not unlawfully obstruct another party's access to evidence, assist a witness to testify falsely, or make frivolous discovery requests.

There is no direct on-point Rule of Professional Conduct in Wisconsin requiring attorneys to be civil when dealing with each other in court, at deposition, in person, via correspondence or on the phone. Why not? Perhaps because the need for civility is so obvious it does not need to be codified? Possible. Perhaps because "civility" is a rather subjective concept and would be difficult to define or delineate? Likely. We "know it when we see it."

In my experience, the vast majority of attorneys conduct themselves professionally and treat opposing counsel civilly and with proper respect. It is the outliers—we can all likely name names at the drop of a hat –who stand out. At our spring conference in Kohler, Mike Crooks participated in a panel on "generational changes." He mentioned that throughout his distinguished career there is a short list of attorneys for whom he will never extend a courtesy - these attorneys have been rigid and difficult in every dealing with Mike, and their conduct has not deserved any kindness in return. Yet many of us in the audience were nodding along with Mike about having such a "short list" in our own minds based on their prior uncivil conduct. How unfortunate.

Mike's advice—and advice I have echoed often when mentoring other attorneys—is that it is a long career, we are all human, and everybody needs a break sometimes. While some people (I hope a small minority) believe that being civil and extending courtesies to opposing counsel undercuts one's zealous representation of one's own client, the reality is that you do your clients a favor by encouraging and engaging in a civil process while zealously defending them and their legal positions.

Compare these two situations:

Situation #1: Plaintiff's counsel and defense counsel are working on a case pre-suit, well prior to the expiration of the statute of limitations. Plaintiff's counsel followed up with defense counsel on a settlement demand and was advised by defense counsel's paralegal that defense counsel is out on medical leave for multiple weeks. The response: "If

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we do not hear back regarding our demand by (X date, well prior to defense counsel returning from leave), we will put it in suit." Defense counsel now had to take time while healing to get another attorney in the firm up to speed to provide a response.

Situation #2: Plaintiff's counsel and defense counsel—both women—had a virtual scheduling conference. The judge was motivated to get a trial date set within a certain time frame. Plaintiff's counsel advised she was going to be on maternity leave during the timeframe when the judge wished to set the trial. The judge asked when plaintiff's counsel would be back from leave, and plaintiff's counsel offered to the judge that she could be available for trial within two or three weeks after her due date. Defense counsel interrupted and said, "No, Your Honor, (plaintiff's counsel) needs to take a maternity leave of twelve weeks, and we have no objection to a trial date twelve weeks or more out." These two attorneys did not know each other well at the time. Plaintiff's counsel called defense counsel afterward to thank her. They have been friends with a very smooth working relationship since.

What did the attorney in the first scenario gain by pressing a perceived advantage during opposing counsel's medical leave and demanding a response well before that attorney returned? Impressing the client? Impressing the boss? Feeling like they "won?" Feeling powerful by kicking someone who is down? A simple act of kindness and civility, in acknowledging the defense attorney's unfortunate circumstance of having to be out for multiple weeks on medical leave and perhaps asking when the handling attorney could provide a response would have made no tangible difference in the outcome of the case. And it could have created or improved a working relationship with an attorney they may have occasion to work with again and again. Some attorneys seem to think a "win" looks like slamming the door on your opponent at every turn. If you have a good case and you do a good job for your client, you get your "win" in the end. A "win" does not need to involve demonizing or sticking it to your opponent at every turn just because they are your opponent.

Although I was born and raised in Northeast Wisconsin, my dad was transferred to Illinois when I was in high school, so I began my legal career in Chicago. When I moved back home to Green Bay nine years ago, I heard repeatedly from local attorneys, "Wow, you must be glad to get out of that snake pit in Chicago and move on to the calmer/kinder practice of law in Wisconsin." Actually, my experience regarding civility was quite the opposite of what people expected. I received more "poison pen" emails and unnecessary roadblocks in Wisconsin than I had ever experienced in Chicago. I have a theory as to why. In Cook County, Illinois (Chicago and surrounding suburbs), although it is not terribly efficient, civil cases go through a "case management" system. You are assigned a motion judge, and you appear before that motion judge every 30 to 90 days as discovery progresses. The judge enters an order at each case management conference with deadlines or other orders as needed. Once all discovery is complete, the case would be certified "ready for trial" and would leave the motion judge and be assigned to a trial judge. This process could take a year to several years, depending on the case, judge, and attorneys.

The motion judges were all situated on the 22nd floor of the Daley Center. Most case management conferences were held in the morning hours. As a result, you would regularly be on the 22nd floor of the Daley Center attending multiple scheduling conferences in a morning. I would run into colleagues and opposing counsel regularly in the hallways of the 22nd floor and in the courtrooms. We saw attorneys in the community often, in person, face-to-face. We would sit together waiting for our case to be called. We would almost always talk before the case was called and decide what both sides needed and what to ask for from the judge. Cooperation was rewarded. It is much easier to work collaboratively when you are looking at somebody face-to-face, shaking their hand, asking about their kids, complimenting them on their shoes. Did I run into the occasional difficult personality? Of course. But there was a very significant familiarity and comfort level with the people with whom we were in an "adversarial situation." Civility was built into the process because there was so much in-person engagement.

The willingness and ability to try a case is paramount to a successful defense strategy. One Law Group, S.C.'s team of defense attorneys and paralegals are not afraid to try cases. We successfully defend insurers and insureds in a wide variety of claims ranging from auto, property and casualty, professional malpractice, bad faith, product liability and insurance coverage matters. Our defense team works with a wide variety of insurers and understands the importance of timely reporting and communication with both the file handler and insured. No claim is too large or too small, whether in litigation, appeal, arbitration, mediation or still in the claims phase. Our defense team has decades of experience in all matters for all sizes of insurers, from national carriers to small town mutuals.

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When I relocated and started practicing full-time in Wisconsin nine years ago (I have been licensed in Wisconsin since 2000), I often would not meet opposing counsel until perhaps a deposition. I would talk with them on the phone via a scheduling conference, but not at any significant length. In my opinion this led to a more arm's length, suspicious, adversarial process. It probably did not help that the locals all thought I was some new, shifty "Chicago lawyer."

A few years ago, I had a case—which ultimately went to trial—against a very well-known and respected plaintiff attorney in Green Bay. At the final pre-trial, we were in a hot dispute over an expert disclosure, with motions, affidavits and a series of emails placed before the judge for his consideration and ruling. The judge ultimately looked at the two of us and said, "You two are in a pissing match," and made it clear he did not appreciate the level of tension (bordering on incivility) which had in his view unnecessarily arisen. After we returned to our offices, one of us (I truly cannot recall which one of us) reached out to the other by email with a brief apology, which led to a broader discussion, multiple *mea culpas* and an olive branch: we decided to have beers together in the near future, which we did. This was a game changer. This attorney and I still get into tangles on occasion, but the level of civility always remains. We took the steps to see each other as human beings beyond "opponent," and that has made a big difference for us and, I believe, has not hurt our clients one bit.

I would like to see our profession continue to make strides to build bridges versus fortresses, to see each other as human beings doing our jobs to the best of our ability and not as evil forces which must be struck down at every step. A few years ago, the Wisconsin Association for Justice (plaintiff's bar) Women's Caucus reached out to WDC leadership to invite defense counsel to attend their yearly Retreat and Seminar. The event takes place on a Thursday afternoon and Friday morning with an overnight stay at Sundara Inn & Spa in the Dells and includes CLE, keynote speakers, dinner, cocktails, and get-to-know-you activities (such as pizza making). Over the years several defense counsel—myself included—have taken advantage of this generous invitation to join many of our plaintiff attorney colleagues at this event. We have been asked to participate in panel discussions with our plaintiff attorney counterparts, topics of which have included—paraphrasing—"What does the other side do that bugs you and why?" This has led to many spirited discussions and, I believe, a better understanding of each other. Ever since attending this event, whenever I get a new case and opposing counsel is somebody I have met at this event, I find the case flows much more smoothly. We have reached out and gotten to know the other side and, although we will always have professional disputes and disagreements, we can do so civilly because we see the other side as human beings with challenges and stresses similar to our own.

To me, this is the way. It is a long career, but a short life. Why create unnecessary stress and antagonism when, working cooperatively, professionally, and civilly, we can all still do great work by our clients and maybe sleep a little better at night?

Author Biography:

Heather Nelson is President and Shareholder of Everson, Whitney, Everson & Brehm, S.C., in Green Bay. She currently serves as WDC President, having served on the Board of Directors and Executive Committee as well. Heather is an experienced trial attorney, having successfully tried cases before juries in state and federal courts throughout Wisconsin and Illinois. She obtained her J.D. from DePaul University College of Law in Chicago and launched her legal career in the Chicago area. Heather became licensed to practice law in Wisconsin in 2000, defending cases in both Illinois and Wisconsin. Joining Everson, Whitney, Everson & Brehm, S.C., in 2016 brought Heather back home to her Green Bay roots. Heather has been active in presenting CLE topics at WDC conferences, for the State Bar of Wisconsin, and at the North Central Region Trial Academy. None of this impresses her rescue dog and best boy, Bear, who cares only about long walks, pond swims and tummy rubs.


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2025 WDC Summer Committee Awards

The WDC Annual Awards recognize the talent, effort, and accomplishments of our incredible members. Congratulations to the following award recipients who will be recognized during the WDC 2025 Annual Conference on August 14-15, 2025!

2025 Advocate of the Year Award Recipient: Heather L. Nelson

Congratulations to Heather Nelson for being selected by the WDC Board of Directors as the 2025 Advocate of the Year! The Advocate of the Year Award recognizes the member with the most defense work success of the prior calendar year.

Heather is President and Shareholder of Everson, Whitney, Everson & Brehm, S.C., in Green Bay. She currently serves as WDC President, having served on the Board of Directors and Executive Committee as well. Heather is an experienced trial attorney, having successfully tried cases before juries in state and federal courts throughout Wisconsin and Illinois. She obtained her J.D. from DePaul University College of Law in Chicago and launched her legal career in the Chicago area. Heather became licensed to practice law in Wisconsin in 2000, defending cases in both Illinois and Wisconsin. Her practice areas include motor vehicle accident, premises liability, wrongful death, and insurance coverage. Heather has been active in presenting CLE topics at WDC conferences, for the State Bar of Wisconsin, and at the North Central Region Trial Academy.

Heather excels as a trial attorney, earning defense verdicts, counseling and caring deeply for her insureds, and giving back to WDC, all while serving as the President of her law firm, which requires that Heather be available to do not only her job but to trouble shoot, problem solve, and manage the challenges faced by all of her partners, associates, and employees. And she does this with grace. There is no person more deserving of this recognition than Heather.

Heather had a number of notable professional achievements in 2024, including a defense verdict at trial in the Brown County case, *Agnes Duening, et al. v. Wilco Cabinet Makers, Inc., et al.*[1] Heather not only earned this professional victory, importantly she took a young associate to trial with her, and included him in many pretrial activities for a professional learning experience. She also turned this outcome into three presentations for WDC : 1) "View from the Other Chair: A Lawsuit from the Insured's Perspective" at the 2024 Winter Conference (presenting with her insured/client), 2) "A Peek Behind the Curtain: The Jury Trial Experience from The Jurors' Point of View" at the 2025 Spring Conference (presenting with three jurors from her two recent trials), and 3) "A View from the Bench: A Trial Judge's Thoughts, Perceptions and Observations About Civil Jury Trials" at the 2025 Summer/Annual Conference (presenting with Brown County Judge Marc Hammer, who presided over the *Duening* trial).

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This year, Heather tried a case as co-defendant with John Shull in Lincoln County, *The Estate of James M. Hartson, et al. v. USAA Cas. Ins. Co., et al.*[2] It was a very emotional wrongful death trial, but Heather and John worked together to earn a defense verdict. While a defense verdict is always a nice win when you are on the defense side of the 'v,' what is always impressive about Heather is how incredibly sensitive she is to her insured's experience. Heather and John knew that in this case especially, the insured had struggled profoundly since the tragic accident that cost another person his life. Heather and John took the time after the insured's testimony to offer support and, after securing a defense verdict both Heather and John reached out to the insured to personally connect with her, to check in on her mental health, and to share some encouraging words. The personal touch and caring attitude of both Heather and John will undoubtedly have an impact on the insured, in a positive way, long into the future after the dust from the trial and the verdict has long settled.

Heather does her job in a way that ensures the best interests of her clients are always met, but she also interacts with opposing counsel in a way that is professional, respectful, and even compassionate – and the world could use a lot more of that. She is a consummate professional and her work in the courtroom is impressive, and of course she is always willing to share her experiences to make everyone around her better too. Her willingness to talk so openly about trials and trial experiences, to involve her insureds, and to help WDC members learn from real jurors is inspiring.

Nominated By: Kristen Scheuerman, *Weiss Law Office*, Brian Anderson, *Everson, Whitney, Everson & Brehm, S.C.*, and Nicole Marklein, *Cross, Jenks, Mercer & Maffei, LLP*

2025 Young Lawyer Award: Ashleigh N. Johnson

Congratulations to Ashleigh Johnson for being selected by the WDC Board of Directors as the recipient of the 2025 Young Lawyer Award! The Young Lawyer Award recognizes a young lawyer (up to ten years past their first bar admission date) who has shown not only excellence in their work and achievements in their career to date, but also a commitment to professional and ethical standards, as well as a commitment to the larger community.

Ashleigh is an attorney at American Family Mutual Insurance Company. She graduated from the University of Wisconsin Law School in 2022.

Asheigh is an extremely hard-working attorney, achieving excellent results for her clients. She has shown a commitment to WDC by taking on the role of the Social Media Chair and Vice Chair of the Young Lawyers Division, as well as putting together a presentation for the 2025 Spring Conference. She created the member spotlights for WDC's social media outlets to foster engagement of our members. Outside of her professional life, Ashleigh is very involved with soccer, playing herself and coaching a youth team in her spare time.

Nominated By: Megan L. McKenzie, *American Family Mutual Insurance Company*

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2025 Distinguished Professional Service Award Recipient: Nicole Marklein

Congratulations to Nicole Marklein for being selected by the WDC Board of Directors as the recipient of the 2025 Distinguished Professional Service Award! The Distinguished Professional Service Award recognizes a longtime member who has given consistent effort to grow and improve WDC.

Nicole Marklein is a partner with Cross Jenks Mercer & Maffei, LLP in Baraboo, Wisconsin. She concentrates her practice on civil defense litigation, both defending insureds on the merits of claims and representing insurers regarding coverage issues. Attorney Marklein also specializes in as employment law, wherein she provides employers cost-effective advice and defends employment-related claims should they arise.

Nicole is a former President of WDC, is the current DRI Representative, and represents the organization on the Wisconsin Civil Justice Council. She continues to offer her time and expertise "above and beyond," including presenting at WDC conferences, meeting with legislators, connecting with other affiliation groups, and suggesting programming and outreach opportunities to multiple committees. Nicole does not just check the boxes, she is an absolute champion of WDC and continues to be after serving in several time-intensive capacities over the years.

Nominated By: Heather Nelson and Brian Anderson, *Everson, Whitney, Everson & Brehm, S.C.*

2025 Publication Award Recipients: Erik J. Pless, Alicia M. Stern, and Kristen S. Scheuerman

Congratulations to Erik Pless, Alicia Stern, and Kristen Scheuerman for being selected by the WDC Journal Editor and Board of Directors as the recipient of the 2025 Publication Award! The Publication Award recognizes a well-written cutting-edge article written for the Wisconsin Civil Trial Journal. Erik, Alicia, and Kristen are receiving the award for their article, "*It Happens to the Best of Us: Avoiding and Mitigating Defaults*," which appeared in the 2024 Spring Issue of the Journal.[3] In addition to presenting the law on the topic, the article gives recommendations for how to deal with defaults, as well as offering a paralegal's perspective.

Erik Pless is an attorney at One Law Group S.C. in Green Bay. He received his J.D. degree from the University of Wisconsin in 1993 and a B.A. magna cum laude in 1990 from Wisconsin Lutheran College in Milwaukee. Erik has been an active trial attorney in Northeast Wisconsin since 1993. Over the past 30 years, Erik has litigated more than 80 jury trials to verdict and has argued before the Wisconsin Supreme Court on multiple occasions. He practices primarily in the fields of insurance and tort law, defending insureds and insurers in personal injury, insurance coverage, and bad faith litigation. Erik also handles product

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liability, legal and other professional malpractice, premises liability, and mold litigation. Erik served on the Board of Directors for the Wisconsin Defense Counsel from 1998 to 2003. He is a member of the Council on Litigation Management and the Association of Defense Trial Attorneys. Erik earned Board Certification as a Civil Trial Specialist from the National Board of Trial Advocacy in 2004.

Alicia Stern is a paralegal at One Law Group S.C. Alicia joined One Law Group, S.C. in 2023. After High School, she graduated from Blue Sky School of Massage with certifications in multiple Neuromuscular Therapies working primarily with physical therapy patients. In December 2007, she made a career change to the legal field and joined a general practice firm in Shawano assisting in everything from Municipal, Family, Criminal, Wills, Power of Attorneys, and Real Estate law. Alicia and her family made a move to the Green Bay area, and she has been working as Attorney Pless's paralegal handling civil defense matters since 2014. Alicia completed the Paralegal Training Program through the University of Wisconsin Oshkosh and is also a State Bar of Wisconsin Certified Paralegal.

Kristen Scheuerman joined Weiss Law Office, S.C., in October 2022 after spending more than a decade at a large Fox Valley law firm, where she practiced as a Shareholder. Kristen's practice has always been focused on personal injury and civil litigation, and before joining Weiss Law Office, she also served as a municipal prosecutor. Throughout her career, Kristen's practice has also included appellate work in a variety of practice areas. Kristen earned her bachelor's degree from Lawrence University and her law degree from Marquette University Law School. She also serves as a mediator throughout the State and accepts appointments to serve as a Guardian ad litem in cases involving minor settlements.

References

1 *See News from Around the State: Trials and Verdicts*, 22 Wis. Civ. Trial J. 2, 75-76 (Summer 2024).
2 *See News from Around the State: Trials and Verdicts*, 23 Wis. Civ. Trial J. 1, 59 (Spring 2025).
3 *It Happens to the Best of Us: Avoiding and Mitigating Defaults*, 22 Wis. Civ. Trial J. 1, 47-59 (Spring 2024).

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WDC, Its Members, and Hamilton Consulting Step Up To Educate Wisconsin's Legislature on Proposed Change to Venue Statute

by: Heather Nelson, Everson, Whitney, Everson & Brehm, S.C.

Recently, State Senator Dan Feyen (Senate Bill 226) and State Representative Cindi Duchow (Assembly Bill 225) authored and co-sponsored legislation which would amend Wisconsin's venue statute, Wis. Stat. § 801.50. The main purpose of the amendment is to remove from venue options any consideration of an insurance company's corporate location or county in which an insurance company does substantial business, if the insurance company is named as a party by virtue of the direct action statute or its subrogation interest.

The proposed amendment reads as follows:

> **SECTION 1.** 801.50 (3c) of the statutes is created to read:
>
> > 801.50 (3c) In determining whether a county is a proper venue under sub. (2) (c), the court may not consider the participation of any of the following:
> >
> > (a) A party joined to the civil action or special proceeding pursuant to s. 803.03.
> >
> > (b) An insurer joined to the civil action or special proceeding pursuant to s. 803.04.
>
> **SECTION 2.** 801.50(3g) of the statutes is created to read:
>
> > 801.50 (3g) For the purposes of sub. (2) (c),[1] a corporation, limited liability company, or other business entity shall be deemed to reside in the place of incorporation or organization, and a corporation, limited liability company, or other business entity shall be deemed to be doing substantial business only in the county of its principal place of business.

The bill's co-sponsors circulated a memo to their legislative colleagues noting that the purpose of the venue statute is to ensure a fair and convenient location is chosen for trial, noting Wisconsin courts "have acknowledged that the county where the underlying conduct occurred is likely the most convenient forum." The memo goes on to note that the somewhat common practice of filing suit in any county where an insurer does substantial business can undermine fairness and convenience factors. The proposed legislation's purposes are to prevent forum shopping, to promote efficiency, to gain consistency in legal decisions, and to encourage fairness and access to justice.

Hamilton Consulting Group, LLC, is a legislative lobbying group engaged by WDC to keep us apprised of such legislative matters and to assist us in registering positions and/or providing testimony. Hamilton made WDC aware of this proposed legislation immediately and, along with WDC's Executive Committee, developed and enacted a plan. An e-mail blast was sent to our membership seeking anecdotal information about civil litigation which was venued in a plaintiff-friendly county which had no actual ties to any defendant (other

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than an insurance company) or the location of the allegedly tortious act. Our members stepped up and quickly sent numerous examples.

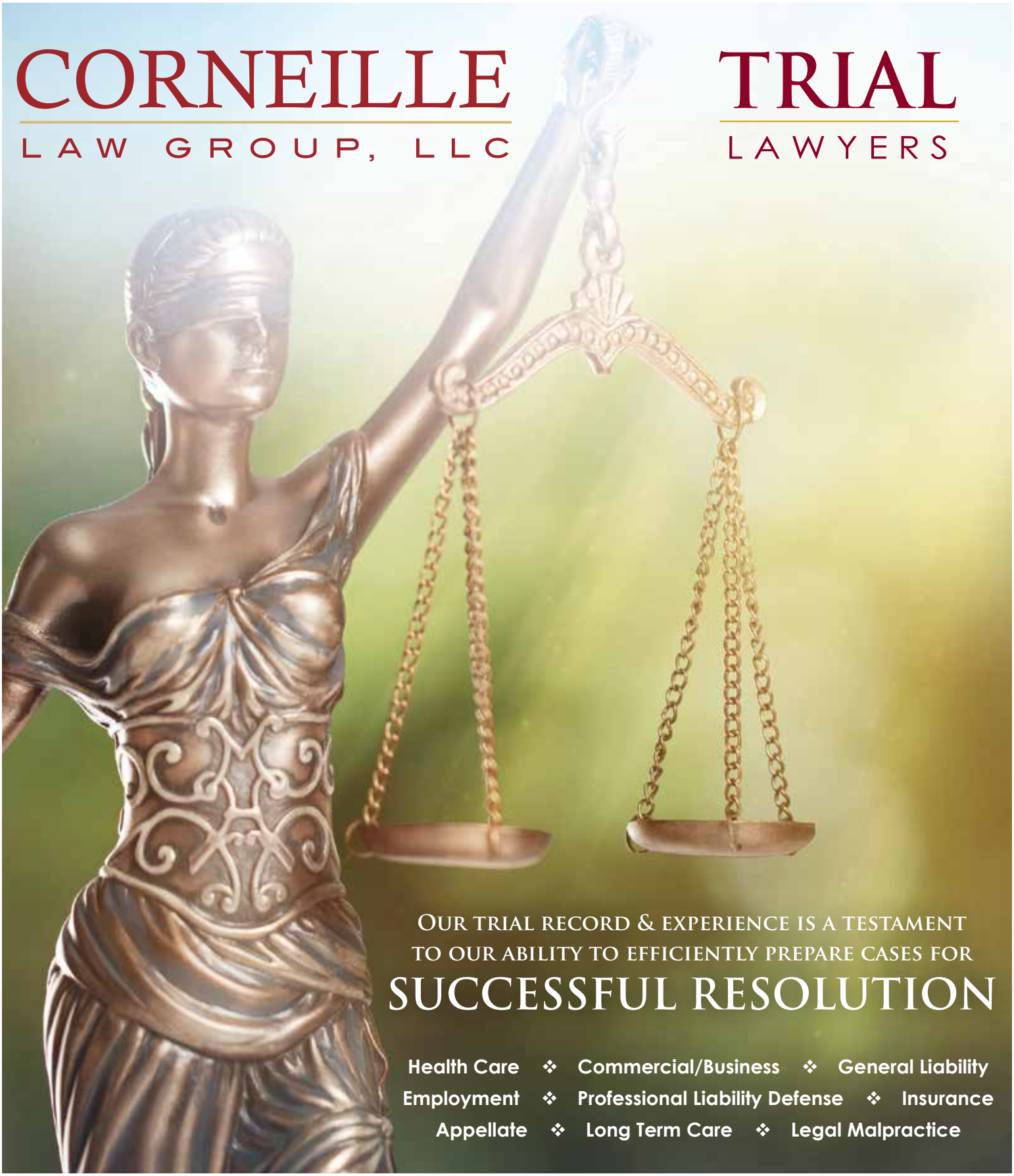
On relatively short notice, WDC Past President and Rural Mutual Insurance Company Vice President of Claims and General Counsel Ariella Schreiber agreed to provide testimony to the Assembly Committee on Insurance on May 8, 2025. Attorney Daniel Mullin of Crivello, Nichols & Hall, S.C., also testified before the Committee. Hamilton worked with Attorney Schreiber and prepared written testimony to circulate to the Committee; this included numerous examples of cases which were filed in counties with no meaningful relationship to the alleged tortious conduct or to any non-insurer defendant – cases in which motions to change venue were nevertheless denied. Some of this anecdotal evidence was provided by Attorney Schreiber based on Rural Mutual Insurance Company's experience with this issue and other examples were provided by numerous WDC members who responded to the eblast.

A few case and anecdotal examples:

- An auto-versus-motorcycle liability accident that occurred in Crawford County. The plaintiffs resided in Crawford County and the defendant resided in Grant County. Witnesses to the accident resided in Crawford County and the majority of the plaintiff's medical treatment occurred in Crawford County. The plaintiffs filed the lawsuit in Dane County. Rural filed a motion to change venue and asked the court to move the venue to Crawford County. The judge denied the motion and the case remained in Dane County.
- A two-vehicle accident that occurred in Rock County. The plaintiff was a resident of Lyman, Wyoming. The defendants resided in Rock County and all the plaintiff's medical treatment occurred in Rock County. The plaintiffs filed the lawsuit in Milwaukee County. Rural filed a motion to change venue to Rock County. The court denied the motion and ruled that the plaintiff's choice of venue is given "great deference." The case remained in Milwaukee County.
- An accident occurred in Illinois, less than a mile south of the border. All parties lived in Rock County at the time of the accident. Plaintiff brought suit in Dane County. Both defendants moved for change of venue. At the time the motion was filed, plaintiff and one defendant still lived in Rock County. The other defendant was no longer in Rock County but was incarcerated at Dodge Correctional. The court denied both motions for change of venue (Dane to Rock) because American Family was in Dane County.
- An accident occurred in Milwaukee County. Plaintiff's address on her ID was in Illinois. The defendant trucking company had its headquarters in Fond Du Lac County. The plaintiff filed in Ashland County because the trucking company indicates on its website that they provide their services throughout Wisconsin. The judge denied a motion to change venue to Fond Du Lac County or in the alternative Milwaukee County.

The Wisconsin Association for Justice (WAJ) registered opposition for the bill. Attorney Noah Domnitz represented WAJ and the plaintiffs' bar, arguing that the legislature should not consider the proposed change because the Wisconsin Judicial Council did not identify the venue statute as problematic or needing any revision. He then reductively concluded that there was therefore no issue with the venue statute. Most interestingly, he suggested that insurance companies are the true "interested parties" in any civil suit and therefore any county in which they do substantial business should be an option when choosing venue.

WDC was very well represented at the hearing by Attorney Schreiber. In addition to providing her written testimony, she deftly fielded questions from the Committee members. Excerpts from her written testimony include the following:



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The purpose of Wisconsin's Venue in a Civil Action statute—Wis. Stat. 801.50—is to set forth the factors that determine where a case's venue is proper. The goal is a fair, convenient trial for all parties in the case. Unfortunately, the current Venue statute creates an opportunity for a plaintiff to sue a defendant in a county that has no relationship to the parties, the accident, or the property at issue simply because an insurance company "does substantial business" in that county. In simple terms, this is forum shopping, and it allows plaintiffs to capitalize on the insurer's business in that county rather than filing the case in the proper venue. Allowing plaintiffs to forum shop based solely on an insurer's business in any particular county is unfair to Wisconsin residents named as defendants in civil lawsuits because it creates an unlevel playing field and harms individuals when they have to travel great distances to counties unrelated to the case.

AB 225 solves the forum shopping issue in a fair and common-sense manner by preventing a plaintiff from using an insurer's mere presence to justify a venue when that venue has no true relationship to the case. It does not change the law on venue in any other way: a plaintiff may still sue a defendant in the county where the claim arose, where the real or tangible property that is the subject of the claim is situated, or in the county where a non-insurer defendant resides or does substantial business. It does not limit a plaintiff's ability to bring the lawsuit against the at-fault party or against the insurer directly. And it does not limit the plaintiff's ability to venue a case in any particular county as long as that county has some relationship to the case other than the insurer's business.

Next, AB 225 promotes fairness in the courts and ensures that defendants are judged by a jury of their peers. It ensures that a case is heard in the county that has actual ties to either the accident, the property, or the defendants. It ensures that the jury is composed of members of the defendant's community. And it avoids favoring the plaintiff over the defendant simply because the defendant had the good sense to buy insurance.

AB 225 also promotes access to the court system by ensuring that cases are heard in the correct county. It will reduce the number of cases filed in counties that plaintiffs view as favorable, which, in turn, promotes better efficiency in all counties. If an accident happens in Clark County and the defendant resides in Clark County, then a Clark County judge should rule on the case and a Clark County jury should evaluate that defendant's conduct. A plaintiff should not have the ability to venue the case in a different county – thereby adding to already high caseloads – simply because they view that county as more favorable.

Finally, any discussion of the Venue statute is incomplete without also addressing Wisconsin's Direct Action Against Insurer Statute, Wis. Stat. 632.24. The Direct Action statute allows injured individuals the right to sue the tortfeasor's insurer directly and without the need to name

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the tortfeasor in the lawsuit. Direct Action statutes are unusual – only about 20% of States have a Direct Action statute and Wisconsin's statute is one of the most expansive in the U.S. While they may not seem directly related, the existence of a Direct Action statute creates another opportunity for forum shopping because it allows the plaintiff to sue the insurer directly without naming any other defendant in the lawsuit. The Direct Action statute and the current Venue statute enable a plaintiff to name only the insurer and file the suit in the desired county simply because the insurer is the only defendant named in the lawsuit. Again, this is not a just result for all parties; it is a result chosen by the plaintiff and enabled by the Venue Statute's current drafting. AB 225 fixes this in a simple and elegant way that ensures justice and does not prejudice any party in the lawsuit.

Wisconsin's Senate has not yet scheduled a hearing on SB-226. We will continue to keep our membership updated as to any developments.

References

1 Wis. Stat. Sec. 801.50 (2)(c) states: "(2) Except as otherwise provided by statute, venue in civil actions or special proceedings shall be as follows: … (c) In the county where a defendant resides or does substantial business…"

Author Biography:

Heather Nelson is President and Shareholder of Everson, Whitney, Everson & Brehm, S.C., in Green Bay. She currently serves as WDC President, having served on the Board of Directors and Executive Committee as well. Heather is an experienced trial attorney, having successfully tried cases before juries in state and federal courts throughout Wisconsin and Illinois. She obtained her J.D. from DePaul University College of Law in Chicago and launched her legal career in the Chicago area. Heather became licensed to practice law in Wisconsin in 2000, defending cases in both Illinois and Wisconsin. Joining Everson, Whitney, Everson & Brehm, S.C. in 2016 brought Heather back home to her Green Bay roots. Heather has been active in presenting CLE topics at WDC conferences, for the State Bar of Wisconsin, and at the North Central Region Trial Academy. None of this impresses her rescue dog and best boy, Bear, who cares only about long walks, pond swims and tummy rubs.

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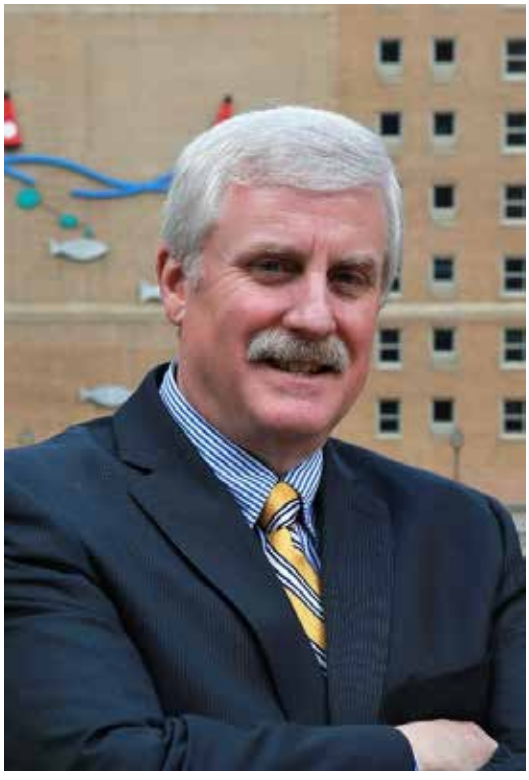

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Before mediating full-time Jim litigated cases for 30 years, primarily defending clients in personal injury, property damage, product liability, environmental, construction and transportation lawsuits. His varied background also includes stints as a plaintiff personal injury attorney and in-house counsel for a major insurer in addition to nearly three decades in private practice. Jim is a past president of WDC.

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A Primer on Defending Cases in Small Claims Court

by: Patricia Epstein Putney, Bell, Moore & Richter, S.C.[1]

I. Introduction

As defense counsel, we are periodically called upon to represent and defend our clients and their insureds in small claims actions. Often, we assign these matters to our young associates to cut their teeth on, given the relatively low exposure of those cases, but we do not always provide enough guidance as to what the rules are in small claims court and how best to defend our clients in that venue. The purpose of this article is to refresh the civil defense bar on the most pertinent rules and statutes governing small claims actions so that we can provide the best defense to our clients, even if the dispute is often about "small potatoes." These "small potatoes" often mean a lot to the clients, and they deserve a vigorous defense.[2]

II. A Brief Recap on the Applicability of Chapter 799, Wisconsin Statutes

Pursuing an action through small claims court is appropriate only for a handful of actions,[3] most of which have monetary caps. Specifically, small claims actions are brought exclusively for the following actions: evictions; return of earnest money tendered pursuant to a contract for the purchase of real property; replevins where the value of the property claimed does not exceed $10,000 or consumer credit transactions when financed at $25,000 or less; actions regarding real estate arbitration; third-party complaints, **personal injury claims and actions based in tort**, **that are under $5,000;** and other civil actions for money judgments or garnishment of wages, where the amount claimed is $10,000 or less. Additionally, small claims procedure is permissible for taxing authorities to recover a tax, including penalties and interest, of $10,000 or less.

While the monetary caps for a claim to proceed in small claims court are fairly straightforward there are a few wrinkles worth noting. First, the distinction between "other civil actions" ($10,000 cap) under Wis. Stat. § 799.01(1)(d) and "actions based in tort" ($5,000 cap) under Wis. Stat. § 799.01(1)(cr) is worth your careful attention because it determines which monetary cap is applicable for a given civil action.[4] In *Estate of Miller v. Storey*, the Wisconsin Supreme Court clarified that "actions in tort" are specific to actions based in common law tort; whereas, "other civil actions" encompasses statutory civil claims.[5] Second, a monetary cap is a limit on recovery and not a bar on pursuing action in small claims courts for claims that might exceed a monetary cap.[6]

III. What are the Rules on Service of Process and When is the Answer Due?

The mode and manner of service of process for small claims actions are mostly dictated by the statutes revolving around civil procedure.[7] However, it is good practice to check with the Clerk of Courts because circuit courts may have their own rules regarding service of summons by mailing or publication in lieu of personal or substituted service.

A defendant can file a motion to dismiss if service is improperly effectuated pursuant to Wis. Stat. 802.06(2)(a)(4).

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As for your answer deadline, generally one should file the answer on the date specified by the Clerk of Courts by the Return Date listed. While the clerk may have the date wrong, best to err on the side of caution.

IV. Venue

The venue used in a small claims procedure depends on the type of action being pursued.[8] There are express rules for certain actions, such as garnishments and taxes. For the majority of claims, however, including torts, the appropriate venue is determined by common civil procedure pursuant to Wis. Stat. § 801.50. In instances of multiple defendants and where venue is based on residence, then the residence of any defendant is an appropriate venue.

If the county where a small claims action is commenced is inappropriate and another county would be the proper venue, the court may transfer venue, either by its own motion or motion of a party, unless the defendant appears and waives the improper venue.

V. Substitution of Judge

A substitution of judge may be requested by any party to a small claims action.[9] The request must be filed on the return date of the summons or within ten days after the case is scheduled for trial. Each party is entitled to only one request for substitution of judge and the request must be in writing.

VI. Does Counsel Need to Appear on Return Date or Just get the Answer Filed?

Circuit courts have broad authority to permit a defendant to join issue without appearing in person, either by telephone or by mail.[10] Additionally, circuit courts are required to adopt rules permitting non-resident defendants to join issue without appearing in person. On the return date of the summons the defendant may answer, move to dismiss or verbally respond to the complaint.[11] If the defendant appears on the return date of the summons the court will inquire if the defendant has a defense to the claims. A defendant's failure to either answer or appear on the return date is detrimental to his or her defense leading to a default judgment.

It is highly recommended that the young associate (or the legal assistant) call the small claims clerk in the court where the matter is pending to find out if the return date requires an in-person appearance. Most often, one must only get their answer filed by the return date deadline but not appear. However, every court is different, so it is prudent to call and find out.

VII. Motions to Dismiss

The small claims statute, Wis. Stat. § 799.20(1), expressly allows a motion to dismiss in lieu of an answer pursuant to Wis. Stat. § 802.06 (2).[12] These should be done wherever appropriate.

Your author recently defended a court commissioner from another county who was sued in small claims court in the plaintiff's county of residence. A motion to dismiss was filed on judicial immunity grounds. The motion to dismiss was promptly granted. Any of the grounds listed in § 802.06(2) may be bases for motions to dismiss in small claims as well.[13] Keep those defenses in mind upon initial review of the complaint.

Another example that comes to mind is medical negligence lawsuits. The exclusive remedy for medical negligence lies in Chapter 655 and those rules must be followed. Disgruntled *pro se* patients cannot simply sue their doctors in small claims court. Seek prompt dismissal when this occurs.

VIII. Discovery: Is it Allowed?

There is nothing prohibiting discovery in small claims court and it is frequently pursued. Given the limited damages involved, however, you will want to be judicious about legal fees incurred. But if certain written discovery, or even a deposition, is required to properly defend the case, then go ahead -- with your client's approval, of course. Nothing prevents you from doing so.

IX. Can you File for Summary Judgment in Small Claims Court?

Yes, you can file for summary judgment. As above, there is nothing in the statutes preventing such a motion and in the right case, where there is no dispute of material fact, it should be pursued.

X. Hearings: Things to Know

While the vast majority of small claims trials are before a court commissioner or judge, many do not know that a small claims party may request a jury of six.[14] This right to a jury trial will be waived if not timely filed. If a commissioner presides, the request for jury trial shall be made at the time a demand for trial is made; otherwise, if a judge presides, the request must be filed before the time of joinder of issue for eviction actions; in all other actions within twenty days after the joinder of issue.

The hearings are typically presided over by a small claims court commissioner. The plaintiff has the burden of proof (civil burden by a preponderance of the evidence). Each side can put on witnesses and cross-examine witnesses. The court commissioner typically rules from the bench but sometimes issues a written decision.

XI. Do the Rules of Evidence Apply?

Small claims statute gives Wisconsin circuit courts wide discretion in the admissibility of evidence.[15] Small claims courts are mandated to be informal and are not governed by common law or the statutory rules of evidence except those relating to privileges under ch. 905 or to admissibility under § 901.05.[16] A judge or commissioner shall admit all evidence that has "reasonable probative value" but may dismiss irrelevant evidence at his or her discretion.[17] Additionally, a judge or commissioner may question a witness himself or herself.

So, do the rules of evidence apply? In short, no. However, the judicial official presiding over the case still has the right to control his or her courtroom. If something would be highly objectionable in a circuit court action, it is worth objecting in small claims court. (But not so much that you will irritate the court commissioner or judge hearing the dispute. Object with caution!)

XII. Are Expert Witnesses Required?

Circuit courts have broad discretion to admit witnesses' testimony regardless of whether the testimony is characterized as "expert" or otherwise.[18] The only limit on that discretion is that a court's finding of fact cannot be wholly based on a claimant's oral hearsay statement.[19] Generally, in small claims court, it is best to have the expert witness testify in person as written statements from an expert witness will not suffice.[20]

Accordingly, Wisconsin circuit courts have used their discretion to either allow or dismiss testimony from experts in varying circumstances. In *Smith v. Menard*, the court held that there was no error in the plaintiff testifying as an expert witness in his own case because the plaintiff's experience in the construction industry showed that the plaintiff was qualified to testify to the cost of damaged construction parts.[21] Furthermore, the defendant had the burden to prove that the plaintiff's expert testimony was irrelevant to the case.[22]

Although small claims courts have broad discretion to allow expert witness testimony, courts tend to use that discretion judiciously. Therefore, at any time in the case's procedure, the court may dismiss any unqualified expert witness testimony.

It is recommended that if you are defending a case that ordinarily would require an expert witness if it were brought in large claims court, you should make that argument in small claims court as well.

XIII. Circuit Court *De Novo* Review

If things go south for either party, they may request a *de novo* review of a circuit court commissioner by a judge within the branch of court in which the case was assigned. The request must be made within twenty calendar days of the hearing if there

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was an oral decision or twenty days from a written decision. Requests for *de novo* review do not stay the order unless otherwise ordered by the circuit court.[23]

If it is a circuit court judge who presides over the small claims actions—which regularly occurs in smaller rural counties—then it is the court of appeals which conducts the *de novo* review.

XIV. Conclusion

There are obviously more provisions that may apply to a given small claims action, so always review Chapter 799 carefully for any issue not specifically addressed in this article. Hopefully, this provides some helpful information for defending cases in small claims courts.

Author Biography:

Patricia Epstein Putney is a Shareholder at Bell, Moore & Richter, S.C. in Madison. She obtained her Bachelor of Arts degree in Art History from Bryn Mawr College in 1984 and her Juris Doctor degree from Brooklyn Law School in 1989. She moved from New York City to Madison in 1995. Patti's practice area relates to the defense of all types of civil litigation. This includes defense of physicians, nurses, and other health care professionals in medical malpractice cases, as well as in licensing, disciplinary and credentialing disputes. She regularly defends personal injury and wrongful death actions, including automobile accidents, premises liability, products liability, insurance agent negligence as well as insurance coverage disputes. Patti has had numerous jury trials throughout the state, has litigated in federal courts and appellate courts and has argued before the Wisconsin Supreme Court and the 7th Circuit Court of Appeals. Patti is a member of the State Bar of Wisconsin, the Dane County Bar Association, Legal Association of Women and she is a Board Member for Wisconsin Defense Counsel. She also started a group called "Lawyer Moms" for working women lawyers with children when her children were young. Patti has been a SuperLawyer since 2012 and is currently on the Top25 List of Madison Lawyers. In her spare time, she plays the flute and piccolo in two community orchestras and a woodwind quintet.

References

1 With special thanks to University of Wisconsin Law student, Marlo Fields, for his assistance on this article.

2 In fact, the courts provide significant information to litigants on all of the required steps and resources, including forms and guidance. *See* https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm.

3 Wis. Stat. §799.01 provides as follows, in pertinent part: "(1) Exclusive use of small claims procedure: (a) Eviction actions. Actions for eviction as defined in s. 799.40 regardless of the amount of rent claimed therein. (am) Return of earnest money… (b) Forfeitures…regardless of any limitation contained therein. (c) Replevins…where the value of the property claimed does not exceed $10,000. (cm) Arbitration… (cr) Third-party complaints, personal injury claims, and actions based in tort, where the amount claimed is $5,000 or less. (d) Other civil actions. Other civil actions where the amount claimed is $10,000 or less [for the following actions]: 1. For money judgments only except for cognovit judgments which shall be taken pursuant to s. 806.25; or 2. For attachment under ch. 811 and garnishment under such. I of ch. 812, [except that s. 811.09] 3. To enforce a lien upon personalty."

4 *See Est. of Miller v. Storey*, 2017 WI 99, 378 Wis. 2d 358, 903 N.W.2d 759 (holding that a plaintiff's claim of civil theft for money was an "other civil action" and not "an action based in tort" and therefore subject to the $10,000 limit of Wis. Stat. § 799.01(1)(d)).

5 *Id*. at ¶ 42.

6 *See Bryham v. Pink*, 2006 WI App 111, 294 Wis. 2d 347, 718 N.W.2d 112 (holding that a plaintiff may elect to sue in small claims court to save time and money even when actual damages exceed the small claims limit).

7 Wis. Stat. § 799.12 provides as follows: "(1) Except as otherwise provided in this chapter, all provisions of chs. 801 to 847 with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter. (2) Any circuit court may by rule authorize the service of summons in some or all actions under this chapter by mail under sub. (3) in lieu of personal or substituted service under s. 801.11…"

8 Wis. Stat. § 799.11(1) details the small claims court venue procedures for various of actions: "(1) The venue of actions in which the procedure of this chapter is used is as follows: … (e) In all other actions, the county specified by s. 801.50. (3) When, in any action under this chapter, it appears…[that venue is not proper place], the court or circuit court commissioner shall, on motion of a party or its

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own motion, transfer the action to [an appropriate]county unless the defendant appears and waives the improper venue…"

9 Wis. Stat. § 799.205 provides as follows: "(1) Any party to a small claims action or proceeding may file a written request with the clerk of courts for a substitution of a new judge for the judge assigned to the case…"

10 Wis. Stat. § 799.22 provides as follows: "(2) …If the defendant fails to appear on the return date or on the date set for trial, the court may enter a judgment upon due proof of facts which show the plaintiff entitled thereto."

11 Wis. Stat. § 799.20 provides as follows, in pertinent part: "(1) Pleading on return date or adjourned date. On the return date of the summons or any adjourned date thereof the defendant may answer, move to dismiss under s. 802.06 (2) or otherwise respond to the complaint… (4) … If the defendant appears…the court or circuit court commissioner shall make sufficient inquiry of the defendant to determine whether the defendant claims a defense to the action…" Wis. Stat. § 799.206 provides as follows: "(1) … all actions and proceedings commenced under this chapter shall be returnable before a circuit court commissioner appointed under s. 757.68 (1) and SCR chapter 75. In any other county, a circuit court commissioner may conduct return date proceedings if delegated such authority under s. 757.69 (1) (d)."

12 *Id*.

13 Wis. Stat § 802.06(2)(a)-(b) provides as follows in pertinent part: "(a) … the following defenses may at the option of the pleader be made by motion: 1. Lack of capacity to sue or be sued; 2. Lack of jurisdiction over the subject matter; 3. Lack of jurisdiction over the person or property; 4. Insufficiency of summons or process; 5. Untimeliness or insufficiency of service of summons or process; 6. Failure to state a claim upon which relief can be granted; 7. Failure to join a party under s. 803.03; 8. Res judicata; 9. Statute of limitations; 10. Another action pending between the same parties for the same cause…"

14 Wis. Stat § 799.21(3) provides as follows: (a) Any party may…file a written demand for trial by jury… (b) In counties in which a circuit court commissioner is assigned to assist in small claims matters…demand for trial by jury shall be made at the time a demand for trial is filed…"

15 Wis. Stat. § 799.209 provides as follows, in pertinent part: "(1) The court or circuit court commissioner shall conduct the proceeding informally… (2) The proceedings shall not be governed by the common law or statutory rules of evidence... The court or circuit court commissioner shall admit all other evidence having reasonable probative value, but may exclude irrelevant or repetitious evidence or arguments. An essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence. (3) The court or circuit court commissioner may conduct questioning of the witnesses… (4) The court or circuit court commissioner shall establish the order of trial and the procedure to be followed in the presentation of evidence and arguments in an appropriate manner consistent with the ends of justice and the prompt resolution of the dispute on its merits according to the substantive law."

16 Wis. Stat. § 799.209(2).

17 *Id*.

18 *Smith v. Menard, Inc.*, 2004 WI App 186, ¶ 18, 276 Wis. 2d 571, 687 N.W.2d 549.

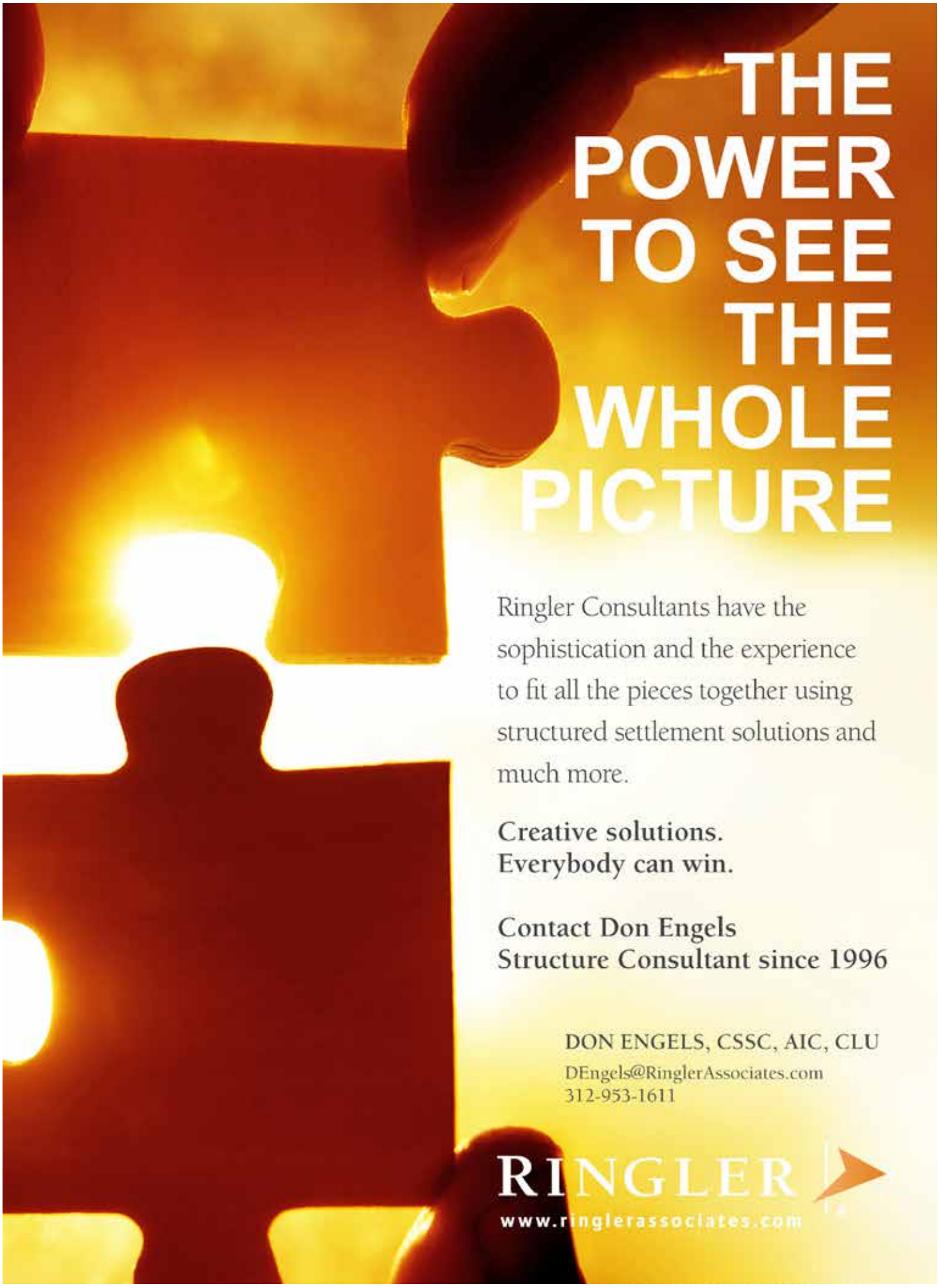
19 Wis. Stat. § 799.209(2).

20 *See* https://www.wicourts.gov/formdisplay/SC-6000V_instructions.pdf?formNumber=SC-6000V&formType=Instructions&formatId=2&language=en, at 10 (July 2025).

21 *Smith v. Menard*, Wis. 2d 571, ¶¶ 11-18.

22 *Id.* ¶ 18.

23 Wis. Stat § 767.17 provides as follows: "(1) Right to de novo review. Any decision of a circuit court commissioner under this chapter shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party…"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Artificial Intelligence in Insurance: Risks, Rewards, & Regulations

by: R. Brandon McCullough &
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While AI has the potential to transform the industry, managing its risks through effective regulation and oversight is imperative

The insurance industry, like many others, has embraced the rapid growth and development of artificial intelligence (AI) and machine learning (ML) technologies. The addition of AI promises benefits such as increased efficiency, enhanced customer satisfaction, and reduced costs. However, alongside these advantages come significant regulatory challenges that must be navigated to guarantee insurers' use of AI is not harmful to consumers and follows existing and incoming laws and regulations. Understanding how AI can be used and its inherent risks is necessary for regulators to effectively develop AI governance programs that balance oversight and regulation with innovation in this developing field of technology.

The successful implementation of AI in the insurance industry is partly due to the fact that data plays such a crucial role in insurance. "Big Data" is a term used to describe very large sets of data and the trends and patterns within those sets.[1] ML systems, predictive models, and generative AI require big data to effectively identify patterns, trends, and associations and have thrived in insurance because the industry is so reliant on Big Data.[2] How and what types of data are being analyzed by insurance companies is an area of concern for regulators. However, the presence of such an abundance of extensive data sets is a major contributor to the continued effectiveness of AI in this industry.

This article will discuss the integration of AI into the insurance industry, focusing on the balance between its transformative potential and the associated risks. It will delve into the regulatory landscape, examining existing and emerging guidelines and legislation designed to mitigate risks like bias, discrimination, and lack of transparency. It will also address the legal challenges and class action lawsuits arising from AI usage, emphasizing the importance of ethical AI usage and compliance with regulatory standards. Ultimately, this article aims to provide an understanding of how insurers can navigate ensuring fair and equitable outcomes for consumers while leveraging the full potential of AI.

I. Uses and Identified Risks of AI

The incorporation of AI into insurance operations spans numerous facets of the industry including underwriting, claims processing, fraud detection and prevention, and customer service. The National Association of Insurance Commissioners (NAIC) Big Data and Artificial Intelligence (H) Working Group surveyed 194 home insurers from 10 states in August of 2023. Of the reporting companies, 70% use, plan to use, or plan to explore using AI/ML models. This number falls between the 88% of reporting private passenger auto (PPA) insurers and 58% of reporting life insurers who were surveyed in December of 2022 and November of 2023, respectively.[3]

Regarding the various insurance operations, home insurers' use of AI ranges from 54% to just 14%.

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In descending order, the percentage of home insurance companies using AI/ML models by insurance function was: 54% in claims, 47% in both underwriting and marketing, 42% in fraud detection, 35% in rating, and 14% in loss prevention. The more specific uses of AI/ML models for home insurers as well as life and PPA insurers included claims triage, image evaluation to determine loss, referring claims for further investigation, risk class assignment, and targeted online advertising.[4]

While the use of AI in different areas of the insurance industry offers numerous benefits, it also introduces several challenges. As insurers continue to integrate AI/ML models into their operations, it is crucial to recognize and understand the potential risks that come with these technologies. AI models and algorithms are trained and developed using large amounts of historical data. This data can contain bias, leading to discriminatory practices and adverse outcomes in underwriting, pricing, and claims processing if not addressed. The possibility of discrimination along with the complex nature of AI and its related programs and systems can also make it difficult to understand how insurance decisions are being made.[5]

This has caused a lack of transparency to arise as another focal point for regulators. In the NAIC survey of home insurers, only 10% of companies said they provide their customers with information regarding what types and the purpose of data being used beyond what is required by law.[6] Although a major benefit of AI is automation and increased speed and efficiency, insurers need to remain accountable for and aware of how AI-generated decisions are being made should a consumer or regulator have questions or concerns regarding these decisions.

II. NAIC Model Guidelines Regarding AI

As AI continues to play a greater role in insurance, regulatory bodies and organizations have started to issue guidance on the appropriate use of AI throughout the industry. In December of 2023, the NAIC adopted a model bulletin titled "Use of Artificial Intelligence Systems by Insurers." The bulletin was issued by the NAIC's Innovation, Cybersecurity, and Technology (H) Committee which was comprised of representatives of insurance regulatory bodies from fourteen states, the District of Columbia, and Puerto Rico. The bulletin reminds insurers that AI-driven decisions and actions impacting consumers must comply with all applicable laws and regulations, mainly a state's prohibitions against unfair trade and unfair claims settlement practices. A state's unfair trade practices act defines what constitutes unfair or deceptive acts, practices, or methods of competition and prohibiting them as such. While a state's unfair claims settlement act establishes standards for the investigation and resolution of a policyholder's insurance claim.[7]

The model bulletin, if adopted, largely does not modify or impose any new requirements in relation to a state's unfair trade and unfair claims settlement acts, as actions by an insurer should never violate these laws regardless of the method being used to make or support a decision by the insurer. Rather, the model bulletin expects insurers to adopt governance frameworks and risk management protocols that are designed to ensure the responsible use of AI. The first state to adopt the model bulletin was Alaska. Arkansas, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and West Virginia have followed suit and adopted the bulletin.[8]

The guidance and expectations of the model bulletin can be generalized into a few key principles:

- Insurers need to develop "AIS Programs" for the "responsible use of AI systems that make or support decisions related to regulated insurance practices." These programs should address governance, risk management, and internal audit functions and should be tailored to an insurer's use and reliance on AI and its related programs and systems.
- AIS Programs should include a governance framework for the oversight of AI systems that prioritizes fairness, transparency, and accountability. The framework should address

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every stage of the life cycle of an AI system from design to implementation.

- The insurer's risk management and internal control framework for AI should be documented. This includes how risk is identified, mitigated, and managed and extends to the oversight and approval of new AI systems, whether those systems are developed or acquired.
- Insurers are responsible for the management of third-party AI systems and data. They must do their own due diligence when acquiring and relying on third-party data or systems developed by third parties to ensure compliance with legal standards imposed on the insurer.
- Lastly, the model bulletin identifies the various topics and related information and documentation that regulators could and likely would inquire about in an investigation. This includes but is not limited to an insurer's policies and procedures relating to the adoption, maintenance, oversight, and compliance with an AIS Program; the scope of an AIS Program; due diligence conducted on third-party data and systems; and how the strength of an AIS program is proportionate to the insurer's use of AI and the potential risks that come with those uses.[9]

III. State Regulations

Since the NAIC's release of the model bulletin, states that have released guidance on the use and regulation of AI in the insurance industry have mainly done so by adopting the model bulletin, most virtually word-for-word, without many changes. Prior to the release of the model bulletin, however, states have passed various laws, regulations, and guidance that address how AI is to be utilized by insurers.

Colorado is one of the first states to have enacted legislation in this area. Effective as of 2021, C.R.S. § 10-3-1104.9 focuses on protecting consumers from unfair discrimination based on a protected class. The statute provides in part:

> Rules adopted pursuant to this section must require each insurer to: (I) Provide information to the commissioner concerning the external consumer data and information sources used by the insurer in the development and implementation of algorithms and predictive models for a particular type of insurance and insurance practice; (II) Provide an explanation of the manner in which the insurer uses external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, for the particular type of insurance and insurance practice; (III) Establish and maintain a risk management framework or similar processes or procedures that are reasonably designed to determine, to the extent practicable, whether the insurer's use of external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, unfairly discriminates based on [protected classes].[10]

In 2023, pursuant to C.R.S. 10-3-1104.9, Colorado issued 3 CCR 702-10, which established the requirements for governance and risk management frameworks related to the use of external consumer data and information sources (ECIDS). The regulation was specifically targeted at life insurers and their use of ECDIS which could potentially result in unfair discrimination on the basis of race. Generally, the framework must be designed to determine whether unfair discrimination could result and if so, remediate it, but also include documentation and oversight requirements. More specifically, a governance and risk management framework should document the policies and procedures for ongoing oversight, addressing consumer complaints, detecting unfair discrimination, and selecting third-party vendors to name just a few. Reports summarizing an insurer's compliance with the regulation are now required annually.

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Colorado has also recently enacted another piece of legislation regarding artificial intelligence. The Consumer Protections for Artificial Intelligence Act, C.R.S. §§ 6-1-1701-1707, was passed on May 17, 2024, and takes effect on February 16, 2026. The act governs the developers and deployers of AI systems, rather than users of AI, and requires them to use reasonable care to protect consumers from "algorithmic discrimination." It targets those developers and deployers of AI systems that are used in making "consequential decisions." "Consequential decisions" refer to decisions that significantly impact consumers, either legally or otherwise, in relation to the denial, cost, or terms of insurance, as well as in other industries.

Effective in 2022, California issued Bulletin 2022-5 stating the Department of Insurance has been made aware of and continues to investigate allegations of racial bias and discrimination across the insurance industry resulting from insurance companies' use of artificial intelligence and other forms of Big Data. It provides, in part:

> Although the responsible use of data by the insurance industry can improve customer service and increase efficiency, technology and algorithmic data are susceptible to misuse that results in bias, unfair discrimination, or other unconscionable impacts among similarly-situated consumers. A growing concern is the use of purportedly neutral individual characteristics as a proxy for prohibited characteristics that results in racial bias, unfair discrimination, or disparate impact. The greater use by the insurance industry of artificial intelligence, algorithms, and other data collection models have resulted in an increase in consumer complaints relating to unfair discrimination in California and elsewhere.[11]

The Bulletin urges insurers to conduct their own due diligence to ensure full compliance with all applicable laws before utilizing artificial intelligence and similar technology. The allegations include unfairly flagging claims in certain zip codes then denying these claims and/or offering unreasonably low settlement offers as well as using biometric data from facial recognition technology to influence the payment or denial of claims. Insurers are advised to take care before and while using AI and its related systems to ensure full compliance with applicable laws, particularly those prohibiting discriminatory practices.[12]

More recently, California Senate Bill 1120, The Physicians Make Decisions Act, took effect on January 1, 2024. The Act amended California's existing law governing the use of utilization review and utilization management functions by healthcare service plans and disability insurers. The Act seeks to regulate the increased use of AI in healthcare, particularly in reviewing, approving, modifying, delaying, or denying requests for healthcare services based on medical necessity. The Act ensures human oversight by requiring denials, delays, or modifications of healthcare services based on medical necessity be made only by a licensed physician or healthcare professional competent to evaluate the relevant clinical issues. Any determinations made by AI, algorithms, or other software tools should not rely solely on a group dataset but must consider the following as applicable:

- An enrollee's medical or other clinical history;
- Individual clinical circumstances as presented by the requesting provider; and
- Other relevant clinical information contained in the enrollee's medical or other clinical record.

In addition, the Act imposes disclosure requirements and subjects the systems in use to possible audit or compliance review.

The state of New York in 2019 released Insurance Circular Letter No. 1 to address the use of ECDIS in underwriting for life insurance. It reminds insurers that they should not be utilizing ECDIS until the

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insurer has determined that it does not collect or rely on prohibited criteria, such as information pertaining to protected classes, and does not yield unfairly discriminatory results.

On July 11, 2024, the New York Department of Financial Services published another, more in-depth circular letter, Insurance Circular Letter No. 7 titled "Use of Artificial Intelligence and External Consumer Data and Information Sources in Insurance Underwriting and Pricing." It advises insurers to ensure they are not using ECDIS or AI Systems that unfairly discriminate against, are using, or are based in any way on protected classes. Insurers are expected to be able to demonstrate that the ECDIS they use are supported by "generally accepted actuarial standards," are based on "actual or reasonably anticipated experience," and "demonstrate a statistically significant, rational and not unfairly discriminatory relationship between the variables used and the relevant risk."

The guidance lays out a three-step process to assess whether the ECDIS used are unfairly discriminatory, requires documentation of their policies and procedures relating to the use and analysis of AI systems and ECDIS, and requires insurers to consider risks from both individual systems and in the aggregate. It also emphasizes the need for transparency and disclosure when insurers make adverse underwriting decisions. Specifically, where an insurer is using predictive models or ECDIS to make adverse underwriting decisions, it requires insurers to provide consumers with a specific reason for the decision including details about the information used to make the decision and the source of such information.

The responses of some states like Colorado have been more in-depth than others. The bulletin issued by the Texas Department of Insurance in 2020, Commissioner's Bulletin # B-0036-20, is less than 200 words. While it is succinct, this bulletin is just as effective as any other in reminding insurers that they are responsible for the accuracy of data used in rating, underwriting, and claims processing regardless of where the data comes from.

IV. Future of Regulatory Frameworks Addressing AI

It is possible that some states may follow in the footsteps of Colorado and begin to enact comprehensive legislative frameworks regarding the ethical use of AI. However, it is likely that many states that have yet to adopt some sort of regulatory framework addressing the use of AI in insurance will continue to adopt the NAIC model bulletin.

In February of 2024, the American Property Casualty Insurance Association (APCIA) commented on a Connecticut Senate Bill No. 2 entitled "An Act Concerning Artificial Intelligence," raising concerns about the proposed legislation. The Act is not just aimed at insurers. It mandates that all developers and deployers of high-risk AI systems must take reasonable measures to safeguard Connecticut residents from any known or likely risks of algorithmic discrimination. The APCIA warned that because the Connecticut Insurance Department has already issued regulations addressing AI, the passing of legislation on the very same topic could potentially result in duplicative and conflicting regulations, complicating compliance.[13]

While states continue to explore and implement new regulations, the insurance industry is already grappling with significant legal challenges under the existing laws. The increasing scope of the regulations in this area will only intensify the scrutiny and legal risks for insurers who are not careful with their use of AI. Class action lawsuits in connection with the insurance industry's use of data and artificial intelligence have already begun. Three class action lawsuits have been separately filed against health insurers Cigna, Humana, and UnitedHealthcare—all by Clarkson, a public interest law firm in California.[14] The suits allege that the health insurance companies' reliance on AI algorithms has resulted in the wrongful denial or premature termination of coverage for healthcare services. More specifically, the complaint filed against Cigna states that the basis for the suit is "Cigna's illegal scheme to systematically, wrongfully, and automatically deny its insureds the thorough, individualized physician review of claims

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guaranteed to them by law and, ultimately, the payments for necessary medical procedures owed to them under Cigna's health insurance policies."[15]

Litigation concerning the insurance industry's use of AI is not a new development. There are over ninety published court decisions, starting in the late 1990s, that mention or name Colossus, an AI-powered software program created by Computer Services Corporation to evaluate injuries and calculate the value of insurance claims.[16] Allstate, which has also been named in numerous lawsuits for its use of Colossus, used the program to make settlement offers for bodily injury claims.[17] In 2010, Allstate agreed to pay $10 million to forty-five states in a regulatory settlement following an examination by the NAIC.[18] The examination found that Allstate failed to "modify or 'tune' the software in a uniform and consistent manner across its claims handling regions."[19] The software has also been criticized for its alleged underestimation and underpayment of insurance claims causing Allstate to be accused of unfair trade practices.[20]

It is crucial for insurers in all sectors of the insurance industry to closely monitor the outcomes of past and pending cases to understand the fine line between leveraging technology for efficiency and violating legal and ethical standards. As regulatory frameworks become more stringent and public scrutiny increases, we can expect a rise in lawsuits targeting insurers that fail to implement AI responsibly. Automation and AI can undoubtedly enhance an insurance company's capabilities, but when these tools are used in ways that undermine consumers' rights and legal protections, they invite significant legal scrutiny. Insurers must verify that their use of AI complies with regulations while also providing the necessary human oversight to maintain fairness and accuracy. Adapting to emerging standards is critical to maintaining trust and integrity within the insurance industry. As such, insurers should proactively review these coming decisions and adjust their AI practices accordingly to avoid similar legal challenges.

As AI has become an increasingly prominent point of litigation, insurers have implemented products that provide insurance coverage for AI usage. Because the integration of AI has introduced new risks and potential legal challenges, insurers and businesses alike have begun implementing ways to mitigate those risks through specialized insurance policies and products that address the unique liabilities associated with AI. This evolving sector of insurance necessitates a deeper understanding of how AI-related risks can be managed and insured, ensuring that as technology advances, adequate protections are in place to safeguard both designers and users of AI.

V. Conclusion

The use of AI and its related technologies are becoming an integral part of the insurance industry at a rapid rate. This growth in the use of AI will only continue as the technology and its benefits are refined. However, with increased use also comes increased risk. Regulatory bodies must be vigilant yet careful. Overregulation in the industry could stifle the development and growth of existing and new technological advancements. But if left unchecked, AI can and has resulted in adverse and unfair outcomes for consumers. Insurers and technology developers must do their part as well. As AI use continues to progress, prioritizing transparency, accountability, and fairness is essential. Insurers must adopt robust governance and risk management frameworks to effectively monitor and control AI use, which in turn will maintain compliance with legal standards, protect consumer rights, and mitigate potential legal challenges.

While AI has the potential to transform the industry, managing its risks through effective regulation and oversight is imperative. If regulatory compliance can be achieved without completely sacrificing automation, the insurance industry can harness AI's benefits while ensuring fair and equitable outcomes and continued growth in the insurance industry.

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The 2025 Women in the Law Committee Personal Hygiene Drive Was a Huge Success!

This spring, the Women in the Law Committee held its annual spring personal hygiene drive. Members were able to shop online and donate directly to the organizations in need, bring physical products to the 2025 Spring Conference, or connect with one of the designated regional coordinators. Thank you to all the members who donated! The drive was a huge success! Additional thanks to the regional coordinators who collected donations, including Mollie Kugler and Cecilia Heberling in the Milwaukee area, Patti Putney in the Madison area, Kara Burgos in the La Crosse area, Elizabeth Reeths in the Wausau area, Kristen Scheuerman in the Appleton area, Heather Nelson in the Green Bay area, and Nicole Marklein in the Baraboo area!

The personal hygiene products collected during the drive were donated to Domestic Abuse Intervention Services (DAIS) and Hope House of South Central Wisconsin (Hope House), among others.

DAIS serves individuals and families affected by domestic violence and advocates for social change through support, education, and outreach. Community contributions make it possible for DAIS to provide a continuum of services, including a 24-hour Help Line and Text Line, emergency safety planning, children's programming, weekly support groups, legal advocacy, prevention and awareness programs, and the only emergency domestic violence shelter for all of Dane County.

Hope House provides services to victims of domestic and sexual abuse in Sauk, Columbia, Adams, Juneau, and Marquette Counties. Its services include a 24/7 confidential helpline, advocacy and supportive counseling, legal services, children's programming, shelter services, community education, and community partnerships. Hope House advocates meet with victims and survivors throughout its five-county service area to provide free advocacy services. The role of Hope House advocates is to listen, believe, support, and empower victims and survivors of domestic violence and/or sexual assault. Advocates answer the helpline, provide counseling and safety planning for adults and children, facilitate support groups, help with obtaining restraining orders and court accompaniment, and provide information, resources, and referrals.

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Wisconsin Supreme Court Rules Thieving Employees Were Wrongfully Terminated

by: Caleb Gerbitz, Meissner, Tierney, Fisher & Nichols, S.C.

The court held that municipal theft citations qualify as "arrest records" under the Wisconsin Fair Employment Act.

The Wisconsin Fair Employment Act prohibits terminating an employee because of an "arrest record." In *Oconomowoc Area School District v. Cota*, 2025 WI 11, 20 N.W.3d 182, 2025 WI LEXIS 149, the Wisconsin Supreme Court interpreted "arrest record" broadly to include municipal theft citations. While this interpretation makes some intuitive sense, the odd result is that an employer was held to have wrongfully terminated two employees who received municipal theft citations for stealing from their employer.

Wisconsin Fair Employment Act's restriction on terminating an employee for an "arrest record" turns on the statute's expansive definition of that term. Wisconsin Stat. § 111.32(1) defines "arrest record" to include, without limitation, all of the following:

> … [I]nformation indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor *or other offense* pursuant to any law enforcement or military authority.[1]

In *Cota*, two brothers, Gregory and Jeffrey Cota, worked on the Oconomowoc Area School District's grounds crew.[2] A co-worker accused them of pocketing cash from scrap metal sales the Cotas performed for the District.[3] The District conducted an investigation and determined that more than $5,000 in scrap metal proceeds failed to make it to the District.[4] However, the District could not definitively determine that the Cotas were at fault, so it turned the investigation over to the local police.[5]

The police investigation did not uncover any new information, but eleven months after the investigation began, the Cotas were cited for municipal theft.[6] Then, another year later, an assistant city attorney told the District that he believed he could obtain convictions against the Cotas.[7] The next day, the District terminated the Cotas, explaining that it had learned that the Cotas "were, in fact, guilty of theft of funds from the School District."[8]

Thereafter, the Cotas filed claims of arrest-record discrimination with the Wisconsin Department of Workforce Development.[9] After two stages of administrative review, the Labor and Industry Review Commission (LIRC) held that the District wrongfully terminated the Cotas based on their municipal theft citations.[10] On appeal, District II of the Wisconsin Court of Appeals reversed, holding that a municipal theft citation does not qualify as an "arrest record" under § 111.32(1).[11]

In a 5-2 decision authored by Justice Rebecca Frank Dallet, the Wisconsin Supreme Court reversed and reinstated LIRC's wrongful termination determination.[12] It concluded (1) that the definition of "arrest record" is broad enough to include municipal theft citations, and (2) that LIRC's determination that the District terminated the Cotas based on their municipal theft citations was supported by substantial evidence.[13]

On the statutory interpretation question, the majority explained:

> The District argues that the phrase "any … other offense" in § 111.32(1) refers only to criminal offenses under the laws of jurisdictions that do not classify crimes as either felonies or misdemeanors. Under this interpretation, the Cotas are not protected by the Act, since they were cited for a non-criminal offense. By contrast, the Cotas and LIRC assert that "any … other offense" includes both criminal offenses from jurisdictions that do not classify crimes as either felonies or misdemeanors and non-criminal offenses under Wisconsin law.
>
> We agree with the Cotas and LIRC. The ordinary meaning of the phrase "any … other offense" includes violations of both criminal and non-criminal laws. Indeed, this is how the term "offense" is consistently used throughout our statutes, and nothing in the structure or remaining text of § 111.32(1) suggests a narrower meaning. Furthermore, interpreting "any … other offense" to include non-criminal offenses serves the Act's express statutory purpose of "protecting by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of … arrest record …" Wis. Stat. § 111.31(2).[14]

In light of the court's interpretation of "arrest record," the question became whether the District terminated the Cotas because of their municipal theft citations (as opposed to the District's own investigation).[15] This issue implicated Wisconsin's so-called "*Onalaska* defense."[16] Named for the court of appeals' decision in *City of Onalaska v. LIRC*, 120 Wis. 2d 363, 354 N.W.2d 223 (Ct. App. 1984), the *Onalaska* defense stands for the proposition that an employer may terminate an employee with an arrest record, provided it does not (1) rely on the arrest record when making the termination decision or (2) discriminate against the employee because of the arrest record.[17]

Here, the court held that the *Onalaska* defense did not apply because LIRC found, as a factual matter, that the District *did* rely on the municipal theft citations when it terminated the Cotas.[18] As a factual finding, that determination was subject to the deferential "substantial evidence" standard of review, which the court held was satisfied here.[19] Thus, the court held that the District wrongfully terminated the Cotas based on municipal theft citations they received for stealing from the District itself.[20]

Even the majority appeared to acknowledge this was a strange result.[21] It went out of its way to clarify that its decision does not forbid terminating employees with arrest records:

> Before we conclude, we clarify that the Act does not prohibit terminating employees with arrest records. Rather, it prohibits terminating employees *because of* their arrest records. The District thus did not lose its ability to terminate the Cotas by referring the matter to the police, and it remained free to terminate the Cotas after such a referral for any lawful reason. If the District in fact believed the Cotas were guilty independent of their arrest records, it could have terminated them because of that belief.[22]

Justice Janet C. Protasiewicz added a solo concurrence "to call attention to the oddity of this outcome and to recommend that our statutes better accommodate employers who are victims."[23] She elaborated:

> So we are left with a strange result. The District was the victim of an offense and suspected its employees did it. It could have fired the employees, but instead asked law enforcement to investigate. Because law enforcement investigated, the employees had an arrest record which limited the District's ability to fire the employees. In the end, under today's decision, the District may not fire the employees it

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> believes stole from the District.
>
> . . .
>
> [T]his case highlights how our statutory scheme breaks down when an employer is the victim of an offense and seeks law enforcement intervention. I urge the legislature to address this unjust situation.[24]

The two dissenters—Chief Justice Annette Kingsland Ziegler and Justice Rebecca Grassl Bradley—each filed their own dissents.[25] Both dissents advanced arguments that the majority applied the wrong standard of review.[26] Justice Bradley's dissent argued: "The majority mistakes a conclusion of law for a finding of fact. Whether an employer unlawfully terminated an employee based on his arrest record is a conclusion of law …"[27] Chief Justice Ziegler agreed that "the majority erroneously treats a legal question—whether the employer terminated the employees because of their arrest records—as a factual one."[28] Both dissents also argued that even if the basis of the District's termination decision presented a question of fact, LIRC's finding was not supported by the record.[29]

As noted at the outset, this case yields a strange result. After *Cota*, employers will think twice before contacting the police to investigate employee misconduct. A police investigation will inevitably produce an "arrest record," which will limit the employer's options when deciding whether to discipline or terminate the offending employee. In an era of divided government, this author is not sure the legislature will heed Justice Protasiewicz's call for legislative intervention, but it is an area where clarification would be beneficial.

Author Biography:

Caleb Gerbitz is an attorney in Meissner, Tierney, Fisher & Nichols, S.C.'s litigation practice group. He focuses on assisting clients in complex commercial, insurance, employment, and appellate matters. Caleb brings to his work a dedication to client service and a focus on providing skillful representation throughout a dispute—from pre-litigation, to trial, and through appeal if necessary.

In addition to his legal practice, Caleb makes a point of closely monitoring Wisconsin's appellate courts. He authors a Substack column, Appellate Approach, which features regular updates on civil cases before the Wisconsin Supreme Court and Court of Appeals. Caleb also co-hosts a monthly "Up for Review" segment on the MTFN Podcast in which he and a colleague discuss the latest developments in Wisconsin's appellate system. In practice, Caleb leverages his expertise in Wisconsin's appellate system to secure successful outcomes for his clients, both at the trial court level and on appeal.

Before joining Meissner Tierney, Caleb clerked for Justice Brian Hagedorn of the Wisconsin Supreme Court from 2020 to 2022. He graduated summa cum laude from Mitchell Hamline School of Law, where he also earned a certificate in conflict resolution and served as head managing editor of the Mitchell Hamline Law Review. Caleb previously served as a policy advisor in the Wisconsin State Senate and as a master-at-arms in the United States Navy Reserve.

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1 (Emphasis added).
2 *Cota*, 20 N.W.3d 182, ¶ 4.
3 *Id.* ¶ 5.
4 *Id.* ¶ 6.
5 *Id.*
6 *Id.* ¶ 7.
7 *Id.* ¶ 8.
8 *Id.*
9 *Id.* ¶ 9.
10 *Id.*
11 *Id.* ¶ 10.
12 *Id.* ¶ 3.
13 *Id.*
14 *Id.* ¶¶ 14-15.
15 *Id.* ¶¶ 27-34.
16 *Id.* ¶¶ 31-33.
17 *Id.* ¶ 31.
18 *Id.* ¶ 32.
19 *Id.* ¶ 33.
20 *Id.*
21 *Id.* ¶ 34.
22 *Id.* (emphasis in original).
23 *Id.* ¶ 36.
24 *Id.* ¶¶ 45, 47.
25 *Id.* ¶¶ 49-77.
26 *Id.* ¶¶ 55, 61.
27 *Id.* ¶ 61.
28 *Id.* ¶ 55 n.8.
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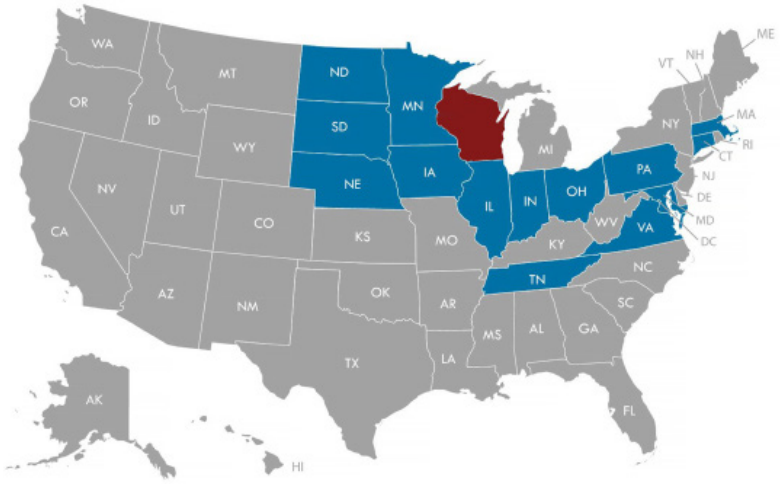

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Insurance Defense Branding Needs a Face Lift and You're the Surgeon

by: Anna S. Osborn, Everson, Whitney, Everson & Brehm, S.C.

When I started at Marquette University Law School, I had no clue what I wanted to do. At that point, I had competed in mock trial for seven years, so I knew that I wanted to do something that would get me in a courtroom, but I was not sure what that would look like. I considered just about every litigation practice area under the sun. For a couple of weeks, I wanted to do labor and employment law. Then I realized I *obviously* had a passion for health law. Scratch that, I was going to be a criminal defense attorney. After some time, I discerned that maybe I should wait until I have some work experience to make any decisions.

I was fortunate enough to get matched with Church Mutual Insurance Company for an internship through the State Bar's Diversity Clerkship Program the summer following 1L. While at Church Mutual, I primarily did work for the in-house legal department, but I got to sit in on the claims roundtable meetings. To prepare for the first meeting, I read the pre-trial report that was sent by the attorney working on the case. Immediately, I realized that I did not want to be reading the reports; I wanted to be the one writing them. Insurance was interesting, but I knew that I wanted to be in a position to be in the courtroom.

To learn more about the intersection of insurance and the law, I took the Insurance course offered at Marquette the following fall. I loved the course, but I realized that I did not particularly enjoy reading insurance policies. At that point, I had already accepted a position for the summer after 2L at Everson, Whitney, Everson & Brehm, S.C., doing insurance defense work, and I was a little nervous. I thought that I would be stuck reading and analyzing insurance policies all day, because that is what I thought insurance defense work was.

After my first couple weeks at Everson, Whitney, Everson & Brehm, S.C., I realized that I was very wrong. Turns out, I really enjoy insurance defense work. I was not reading insurance policies all day, instead I was observing attorneys in depositions and mediations, researching interesting legal issues, and even drafting deposition summaries to send to the insurance adjuster. I appreciate how each case is like a puzzle, and our job is to put the pieces together to get the entire picture. I value that any case could end in a trial. Recently, when I looked back to think about my concerns regarding insurance defense work, I realized that they stemmed from the same issue. Insurance defense needs better branding. Many law students have misconceptions about insurance defense that may lead to them not considering the practice area at all, even when the actual work aligns with their interests. The remainder of this article will outline ways that current insurance defense attorneys can present insurance defense work to make it more appealing to law students.

I. Insurance Defense Categorization

The first issue with insurance defense branding is the name. When I heard insurance defense, I thought of coverage and bad faith litigation. Now, I know that is not all the insurance defense world has to offer, but that was my understanding at the time I was interviewing at an insurance defense firm. To remedy this issue, I would encourage insurance

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defense firms to consider using a different term to identify that the firm defends personal injury claims. It would perhaps look like describing your practice as insurance and personal injury defense, instead of just insurance defense.

This minor change will help law students better understand the nature of your practice when determining whether they are interested in exploring a future with your firm. For example, a student who enjoyed torts and is interested in litigation may not submit an application at an insurance defense firm under the misconception that it is coverage work when they would have applied to a firm that described their practice as personal injury defense. It is important to remember that many law students do not have any experience in the legal field and being more clear about something as minor as your practice area description can make the legal field—and your law firm—more accessible for those students.

II. Emphasize People

The biggest misconception that I had about insurance defense work, which arose from a general misunderstanding of the nature of the work, is that it only involves interactions with insurance companies. I imagined days filled with calling adjusters, reading insurance policies, and not much else. I cannot say that is what all law students think, but there is a belief by many law students that insurance defense work is working for large insurance companies to help them spend as little money as possible, with few other considerations. While it is undeniable that part of an insurance defense attorney's job is to limit the insurance company's liability, there are other important considerations to which law students are more sympathetic.

For example, not all law students understand that there is often an insured client that we represent in addition to the insurance company. So, as much as it is the attorney's job to limit the insurance company liability, the insurance defense attorney also has a valuable and much more personal job of ensuring that the insured client is informed and well-represented. To me, that aspect made a significant difference in my motivation to do the work. As law students, we always hear that we will be helping people out in some of the worst, most stressful situations of their lives. This motivates us to do the work because many of us went to law school to help people. I always struggled with extending this logic to insurance companies. It cannot really be the worst, most stressful situation of an insurance company's life if they deal with lawsuits nearly every day. However, it can, and probably is, the worst, most stressful situation of an insured client's life. Many of them are being sued for more money than they could ever pay, and they are scared about their future and their livelihood. Being able to extend this motivation to insurance defense work through the individual client has made a profound difference in my enjoyment and my anticipated longevity in insurance defense work.

One way to make sure that law students see the impact on the insured client is to include your summer law clerk in client communications. I have sat in on phone calls with clients that range from initial calls, informing them of representation and answering questions to calls gathering information for discovery responses. These calls have allowed me to see first-hand the impact that insurance defense attorney has on the insured client, and in turn motivates me to one day practice personal injury defense.

III. Connect with Law School Organizations

It is also necessary to consider how to connect with law students. The most efficient way to connect with law students who could benefit from learning more about insurance defense is through the student organizations at the law school.

Student organizations are an efficient way to connect with students because the organizations are specific to different areas of law, so you will connect with students who are already at least somewhat interested in your area of work. By connecting with, for example, the Trial Lawyers Association at Marquette, you are connecting with

students who are already interested in litigation. For firms that do medical malpractice defense, the Health Law Association could be a great way to connect with students who may not even consider insurance defense as an aspect of health law. No matter your firm's specialty, there is likely at least one organization that can connect you with students who are interested in learning more about insurance defense and your day-to-day as an attorney.

In addition, there are plenty of events to attend. I cannot speak for the University of Wisconsin Law School, but at Marquette Law School, most organizations host at least one networking event and one attorney panel a year. Many organizations will do multiple of each event. While it may not be easy to get on a panel, organizations are always looking for more attorneys to attend the networking events. I imagine that right about now you are thinking something along the lines of, "Why would a law student want to listen to me?" The answer may seem silly, but the truth is that law students are excited to talk to just about any lawyer. At the end of the day, law students understand that they do not know anything about practicing law. Any opportunity to learn what the practice of law actually looks like is incredibly valuable to a law student. We spend so much time learning the legal concepts that it can be easy to lose sight of the end goal of practicing law. Interactions with attorneys help us keep sight of our future through it all.

IV. Consider Becoming an Adjunct Professor

Another way to connect with law students is by being an adjunct professor. To preface this section, I understand that being an adjunct professor is no small feat. It requires a significant amount of time that you probably do not have. However, you would be hard pressed to find a law student that was not positively impacted by an adjunct professor. As I mentioned earlier, we understand that we know very little about the actual practice of law. Having even a couple of hours a week where we are being taught by people who are still actively practicing law is valuable.

As an adjunct professor, you can inform students on the nature of insurance defense work, but more importantly, you can show them that an insurance defense practice can be complex, fulfilling, and sustainable. Every single day we see advertisements for personal injury firms and attorneys that have been around for decades, but we rarely see any representation from the defense side. Even if you are teaching a class unrelated to or broader than insurance defense, it is beneficial for students to regularly see an insurance defense attorney who enjoys the work that they do. Also, being an adjunct professor allows you to be a resource for student questions about insurance defense. Most law students are not comfortable going to a networking event or an interview and asking a question that feels "stupid" or "too basic," but they may feel comfortable asking that same question to a professor who works in the field. By being this resource, you can help clarify the common misconceptions surrounding insurance defense work and encourage students to consider the area of practice more than they may have otherwise.

V. Demystify Billing

To many young law students, billing time is a completely foreign concept. We do not know anything about it other than what we hear from older students and attorneys, which is that it is the worst. I think it is fair to say that billing is not going anywhere, so it is important to give law student clerks and young attorneys resources to make billing easier. One resource that I was grateful to have was a half-hour meeting with a partner about billing. During that time, she walked me through the basics, and she was also able to give me some tips like how long certain tasks typically take and shortcuts in our billing system to make entering time quicker. She also set clear expectations for what my time entries should look like and made herself a resource if I have questions as I begin billing my time. After that meeting, she also sent me copies of full billing statements from each of the partners, so that I could get a feel for the descriptions of time entries.

Now, billing is not fun by any means, but it is manageable because I was given the resources to make it easier. Something as simple as a handout of what activities go under typical billing codes could be incredibly helpful for a law student or young attorney. Ease of billing time may not impact you, but for a law student or young attorney it can be the difference between staying in insurance defense and moving to a practice where there is no billing time.

VI. Conclusion

Insurance defense work has a major branding issue. Many law students do not understand the nature of the work, and those that do may have misconceptions that are preventing them from exploring their interest in this area of the law. To encourage law students' interest in insurance defense, attorneys who enjoy the work need to connect with law students and share what insurance defense practice looks like and what insurance defense attorneys do on a day-to-day basis. Once an interest has been realized, to retain those attorneys, firms should create resources to help them manage the less appealing aspects of the work, like billing. At the end of the day, you, as an insurance defense attorney, can make this field more appealing and accessible to law students; it just requires a rebrand.

Author Biography:

Anna S. Osborn joined Everson, Whitney, Everson & Brehm, S.C., in May of 2025 as a Summer Associate. She is a rising third year law student at Marquette University Law School. Prior to working at Everson, Whitney, Everson & Brehm, S.C., Anna spent a summer as a legal intern at Church Mutual Insurance Company, S.I.. She received her bachelor's degree from University of Missouri-Kansas City, where she coached and competed on the undergraduate mock trial team.

Wisconsin Pattern Civil Jury Instructions Update

by: Amy Freiman, Hills Legal Group, Ltd.

I. Introduction

WDC maintains various substantive law committees which are dedicated to their respective topic. The Civil Jury Instruction Committee (the "Committee") is one of the fifteen committees. Approximately three times per year, the Committee receives a report from the Wisconsin Jury Instruction Committee and Office of Judicial Education on civil jury instructions that the Wisconsin Jury Instruction Committee is considering revising and/or creating based on developments in the law, whether it be through case law or statutory changes made by the legislature. Upon receipt of the report from the Wisconsin Jury Instruction Committee, the Committee will report to the WDC Board of Directors and determine if WDC will submit an official position on the proposed revision to an existing civil jury instruction and/or creation of a new civil jury instruction. Additionally, the Committee receives requests from WDC members to submit proposed new civil jury instructions to the Wisconsin Jury Instruction Committee for consideration. When those requests are received from members, the Committee will discuss with the WDC Board of Directors and submit the proposed instructions to the Wisconsin Jury Instruction Committee for consideration.

The purpose of this article is to highlight revisions the Wisconsin Jury Instruction Committee made to existing civil jury instructions, as well as civil jury instructions created by the Wisconsin Jury Instruction Committee over the last year or so. Please note that this article will not provide the full jury instruction for each instruction discussed below. The full instruction should be reviewed prior to use in a case. You can review all civil jury instructions for free on the Wisconsin Law Library website.

II. Specific Civil Jury Instructions

a. Wis. JI-Civil 5: Comment: General-Neutral Language

The Wisconsin Jury Instruction Committee created a comment to explain the committee's approach to the use of gender-neutral language throughout the civil jury instructions and to provide references for users who wish to use gender-neutral language in revising or supplementing published instructions.[1]

In this comment, the Wisconsin Jury Instruction Committee addresses substantive gender bias and the use of pronouns throughout the instructions. The Wisconsin Jury Instruction Committee acknowledges that trial courts have the discretion to use the pronouns "they" or "their" in place of "he" or "she" when referring to a single person. This comment also provides techniques to assist with the revision of any form jury instruction that may be required based on the facts of a case. The Wisconsin Jury Instruction Committee indicates it attempts to prepare instructions that are free from substantive gender bias which means statements that indicate that one gender is to be treated differently from the other in applying law as described in the instructions.

In this regard, the Wisconsin Jury Instruction Committee added language to Wis. JI-Civil 50 –

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Preliminary Instruction: Before Trial – to address assumptions individuals make from their own personal backgrounds and experiences to ask jurors to consider the possibility that their bias may affect how information is evaluated, and decisions are made.[2]

b. Wis. JI-Civil 260: [Expert] Opinion Testimony

The Wisconsin Jury Instruction Committee revised Wis. JI-Civil 260 regarding expert opinion testimony. The revised instruction now includes brackets around the word "expert" in the instruction title to signify that its inclusion is optional. The Wisconsin Jury Instruction Committee suggests omitting the term from the title of the instruction provided to the jury to reduce the potential risk of "judicial vouching" – the concern that a jury might place undue weight on testimony from a witness labeled as an "expert" by the judge.[3] The Wisconsin Jury Instruction Committee further recommends that trial judges minimize any declarations or references to a witness's expertise in the jury's presence to mitigate the risk of "judicial vouching."

The Wisconsin Jury Instruction Committee notes that its recommendation to trial judges is based, in part, on Professor Daniel Blinka's assessment that, under the current rules of evidence, asking the court to make a formal finding of expertise before the jury is both inappropriate and unnecessary. As explained by Profession Blinka:

> There is no set procedure for qualifying an expert witness. Traditionally, the proponent elicits the witness' education, training, and experience at the start of the direct examination. Under common law practice, the proponent then asked the court to make a "finding" that the witness was an expert in the identified field. If the witness' credentials were dubius, the court might allow the opponent to *voir dire* the witness regarding qualifications. Before any questions were put to the witness regarding the facts of the case, the trial judge had to find he or she was an "expert."

The Wisconsin Jury Instruction Committee further notes that under Wis. Stat. § 907.02, the common law procedure is both inappropriate and unnecessary, partly because a formal finding of expertise could be mistaken by the jury for the judge's endorsement of the witness' testimony. Although the judge must determine the witness' qualifications under Wis. Stat. § 901.04(1)(a), that finding need not be revealed to the jury.

c. Wis. JI-Civil 1133: School Bus: Equipped with Flashing Red Warning Lights and Without Amber Warning Lights and 1133A: School Bus: Equipped with Flashing Red and Amber Warning Lights

The Wisconsin Jury Instruction Committee approved a revision to Wis. JI-Civil 1133 to make the instruction consistent with 2013 Wisconsin Act 96. This Act modified the statute to require that a school bus "must be equipped with a 360-degree flashing white strobe light and either: (a) flashing red warning lights; or (b) flashing red and amber warning lights."[4] The change to the law was reflected in the instruction. Similarly, the Wisconsin Jury Instruction Committee created Wis. JI-Civil 1133A for school buses equipped with flashing red and amber warning lights. The new instruction sets forth the requirements for an operator of a school bus equipped with flashing red and amber warning lights as specified in Wis. Stat. § 347.25(2).[5]

d. Wis. JI-Civil 1340: Stop: For School Bus Loading or Unloading Children

Similar to Wis. JI-Civil 1133, the Wisconsin Jury Instruction Committee revised Wis. JI-Civil 1340 to reflect 2013 Wisconsin Act 96 and an amendment to Wis. Stat. § 347.25(2). Wis. JI-Civil 1340 now provides that a driver of a vehicle that approaches from the front or rear of any school bus that has stopped on a street or highway when the bus is displaying flashing red warning lights shall stop

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the vehicle not less than twenty feet from the bus and shall remained stopped until the bus resumes motion or the bus driver extinguishes the flashing warning lights.[6]

e. Wis. JI-Civil 1391: Liability of Owner or Keeper of Animal: Common Law

The Wisconsin Jury Instruction Committee revised the suggested special verdict language in Wis. JI-Civil 1391 to add the word "negligence" to question four. The prior suggested language was "Did (defendant) use ordinary care to restrain and control the animal?" The revised suggested language now states "Was (defendant) negligent in failing to use ordinary care to restrain and control the animal?"[7]

f. Wis. JI-Civil 1920-1932: Nuisance

The revisions made by the Wisconsin Jury Instruction Committee to the civil jury instructions on nuisance law expanded on how to determine whether a nuisance is permanent or continuing and the impact such a designation has on the applicable statute of limitations.[8]

g. Wis. JI-Civil 2418A-2418B: Unfair Trade Practice

The Wisconsin Jury Instruction Committee renumbered Wis. JI-Civil 2418 (Unfair Trade Practice: Unfair, Deceptive, or Misleading Representation: Wis. Stat. §100.18(1)) to 2418B. The Wisconsin Jury Instruction Committee then created Wis. JI-Civil 2418A which addresses claims brought by private parties under Wis. Stat. § 100.18(11)(b)2. Wis. JI-Civil 2418B addresses claims brought by the state pursuant to Wis. Stat. § 100.18(1). A claim brought by a private party has three elements while a claim brought by the state has two elements.[9]

III. Conclusion

While this article addresses some of the revisions the Wisconsin Jury Instruction Committee made to existing civil jury instructions and the creation of new civil jury instructions, the article does not address all changes. Lawyers are encouraged to review all civil jury instructions for any updates prior to preparing proposed jury instructions to file with the court and/or use at trial. Furthermore, to the extent that any WDC member has created an instruction for use at trial that may be helpful in other matters, the Committee asks that those instructions be provided for potential submission to the Wisconsin Jury Instruction Committee for consideration.

Author Biography:

Amy M. Freiman is a shareholder at Hills Legal Group, Ltd. in Waukesha. After graduation from the University of St. Thomas School of Law, Amy worked for another firm in the Waukesha area for three years before joining Hills Legal Group in 2014. Since joining Hills Legal Group, she has devoted her practice to insurance defense and coverage matters. Amy has represented insurers in a variety of different types of cases within the ambit of the insurance defense umbrella. She has been named a Rising Star since 2019. Amy currently serves on the Wisconsin Defense Council Board of Directors and was the former president of the Waukesha Bar Association. In her free time, she enjoys spending her time with her husband, three children, and pets, attending sporting events, and playing recreational sports.

References

1 Wis. JI-Civil 5 – Comment: Gender-Neutral Language.
2 Wis. JI-Civil 50 – Preliminary Instruction: Before Trial.
3 Wis. JI-Civil 260- [Expert] Opinion Testimony.
4 Wis. JI-Civil 1133 - School Bus: Equipped with Flashing Red Warning Lights and Without Amber Warning Lights.
5 Wis. JI-Civil 1133A – School Bus: Equipped with Flashing Red Warning Lights and Amber Warning Lights.
6 Wis. JI-Civil 1340 – Stop: For School Bus Loading or Unloading Children.
7 Wis. JI-Civil 1391 – Liability of Owner or Keeper of Animal: Common Law.
8 Wis. JI-Civil 1920-1932.
9 Wis. JI-Civil 2418A-2418B.

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WDC Presents the 2025 Young Lawyers Insurance Seminar

by: Ashleigh N. Johnson, American Family Mutual Insurance Company, S.I.

On July 15, 2025, Wisconsin Mutual Insurance Company hosted young attorneys from throughout the state for the 2025 WDC Young Lawyers Insurance Seminar. This seminar included lectures on a variety of topics, including the Role of Defense Counsel, Reinsurance, and Ethics. The seminar was a great opportunity for young attorneys to network with other young attorneys and to ask questions that they are facing early on in their practice. Thank you to Crystal Uebelher, Ariella Schreiber, and Grace Kulkoski for teaching WDC's young lawyers about the ins and outs of insurance law!

Author Biography:

Ashleigh N. Johnson is an attorney at American Family Mutual Insurance Company. She graduated from the University of Wisconsin Law School in 2022. She currently serves as the WDC Social Media Representative and the Vice Chair of the Young Lawyer Committee.

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News from Around the State: Trials and Verdicts

The WDC regularly publishes notable trial verdict results in the Wisconsin Civil Trial Journal and on its website. If you or someone you know has had a civil trial recently, we would like to include information about the results in our next issue. We are looking for all results, good or bad. Submissions can be published anonymously upon request. Please submit your trial results directly to the WDC Journal Editor, Attorney Vincent Scipior, at vscipior@cnsbb.com. Please include the following information:

Case caption (case name and number);
Trial dates (month and year);
Brief summary of the background facts;
Issues for trial (was liability contested, did the parties stipulate to damages, etc.);
At trial (what happened, who testified, what did the parties ask for, what did the jury award, etc.);
Plaintiff's final pre-trial demand;
Defendant's final pre-trial offer;
Verdict amount; and
Any other interesting information, issues, rulings, etc.

Jodi M. Devine-Schwantes, et al. v. Erie Insurance Exchange, et al.
Marathon County Case No. 24-CV-83
Trial Dates: June 3-4, 2025

Facts: On or about April 30, 2022, plaintiff was exiting the Highway 29 off ramp and making a left turn at the intersection with Grand Avenue in Marathon County. The defendant failed to stop for a red traffic light and collided with the plaintiff's vehicle. Plaintiff claimed to have sustained multiple injuries, including a closed head injury, cervical and thoracic spine injuries, and a left shoulder SLAP (labral) tear and an exacerbation of AC joint arthritis, requiring surgical intervention.

Issues for Trial: Liability and damages were contested. The defendant admitted to failing to stop for the red light. Plaintiff acknowledged that once the traffic light changed to green she did not look to see if any traffic was coming from the left.

At Trial: The defendant and the plaintiff testified live at trial. Dr. Colleen Boling, D.C. and Dr. James Prosser, DO both testified by video at trial.

The jury found defendant to be 90% at fault and plaintiff 10% at fault. The jury awarded $78,804.50 in past medical expenses, $7,750.00 in future medical expenses, $75,000.00 in past pain and suffering, $100,000.00 in future pain and suffering, and $0 for loss of consortium, for total damages of $261,554.50, and a final verdict in the amount of $235,399.05 (after deducting 10% for plaintiff's contributory negligence).

Plaintiff's Final Pre-Trial Demand: $606,554.50
Defendant's Final Pre-Trial Offer: $236,554.50
Verdict: $235,399.05

For more information, contact Todd Dickey at tdickey@eversonlaw.com.

Ronald Sweeny v. Emmanuel Properties WI #1, LLC, et al.
St Croix County Case No. 22-CV-415
Trial Dates: January 21-23, 2025

Facts: Plaintiff, an invitee, fell to the ground in July 2020 after stepping out of a commercial building that was being used as an auction business while picking up items he had won on an online auction. Plaintiff alleged the location and step were not code compliant and violated Wisconsin's Safe Place Statute. The defense alleged the single step was simply not recognized in broad daylight by plaintiff and was not required to be made to code given the age and condition of the building. Plaintiff alleged an ongoing shoulder injury, among other injuries.

Issues for Trial: Liability and damages were disputed.

At Trial: In addition to the owner, tenant and plaintiffs, Hans Timper testified as an expert for plaintiff and Geoffrey Jillson, PE on behalf of defendant. Medically, plaintiff presented testimony from Dr. Jack Bert, an IME expert, and the defense presented testimony from Dr. William Simonet.

The verdict allocated fault to the parties as follows: 12% to the property owner, 23% to the tenant, and 65% to the plaintiff.

For damages, the jury awarded $1,000 for past medical expenses, $0 for future medical expenses, $1,000 for past pain and suffering, $0 for future pain and suffering, and $0 for loss of consortium.

Plaintiff's Final Pre-Trial Demand: $145,000
Defendant's Final Pre-Trial Offer: $20,000
Verdict: $0

For more information, contact Andrew Brown at a.brown@redingpilney.com.

Justine Laes, et al. v. Rural Mutual Insurance Company, et al.
Fond du Lac County Case No. 23-CV-408
April 15, 2025

Facts: This lawsuit involved a dog bite incident that occurred on February 17, 2023. The plaintiff was a 54-year-old woman making a delivery to a rural residence through her job as a delivery driver. The plaintiff alleged that three dogs approached her when she got out of her car to deliver a package and one

bit her left calf. The plaintiff asserted claims for negligence and strict liability under Wisconsin's dog bite statute.

The plaintiff had a scar on her leg that was approximately 1.2 cm. Plaintiff's claimed past medical specials were $1,980. This accounted for three days of medical appointments within approximately two weeks of the incident. Additionally, the plaintiff had a report from a plastic surgeon who opined that the plaintiff was a candidate for a scar revision surgery. The cost of the future scar revision was $10,000.

Issues for Trial: The defendants stipulated to liability in exchange for dismissal of the insured. The parties also stipulated to $1,980 in past medical expenses. The issues for trial were future medical expenses and past and future pain and suffering.

At Trial: The plaintiff and her husband testified. The plaintiff testified that multiple times a month people will ask her about her scar. She also testified that this incident caused her to experience anxiety and stress around dogs. A video deposition of the plaintiff's medical expert was shown.

In closing, the plaintiff asked for $10,000 for future medical treatment, $30,000 to $40,000 for past pain and suffering, and $20,000 to $40,000 for future pain and suffering. Defendants recommended $4,000 for past pain and suffering, $2,000 for future pain and suffering, and $0 for future medical treatment.

In addition to the $1,980 in stipulated past medical expenses, the jury awarded $0 for future medical expenses, $8,000 for past pain and suffering, and $2,000 for future pain and suffering, for a total award of $11,980.

Plaintiff's Final Pre-Trial Demand: $37,500
Defendant's Final Pre-Trial Offer: $15,000
Verdict: $11,980

For more information, contact Matthew Granitz at mgranitz@borgelt.com or Madeline Weston at mweston@borgelt.com.

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Calendar of Events

August 14-15, 2025

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Kalahari Resort and Convention Center
Wisconsin Dells, WI

December 12, 2025

2025 Winter Conference
Marriott Milwaukee West
Waukesha, WI