Committee Name:
Senate Committee – Judiciary, Corrections and Privacy (SC–JCP)

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WISCONSIN LEGISLATURE

P.O. BOX 8952 · MADISON, WI 53708

TO: ASSEMBLY COMMITTEE ON JUDICIARY AND SENATE COMMITTEE ON JUDICIARY, CORRECTION, AND PRIVACY ELECTIONS MEMBERS

FROM: REPRESENTATIVE GLENN GROTHMAN AND SENATOR DALE SCHULTZ

SUBJECT: ASSEMBLY BILL 456

DATE: 08/21/2003

The purpose of this testimony is to urge passage of Assembly Bill (AB) 456. Prior to 1979 the interest one is required to pay on a judgment was 6%. In 1979, at a time when interest on treasury bills neared 10% - almost a historic high, the legislature changed the rate to 12%. This was fine in 1979, but today when the interest on treasury bills is around 1%, it is a punitive amount and clearly inappropriate. Interest should be set near what one would receive on an investment, not to punish a party.

You will hear today from representatives of the insurance industry who will tell you that a 12% interest rate has a chilling effect on appeals of outrageous settlements. It distorts our justice system in that it encourages parties to take unreasonable positions in order to get a greater return on their money than they would on a certificate of deposit or a similar investment.

However, it is also important to look at this legislation through the eyes of a standard debtor. While many people wind up in a difficult financial situation because of irresponsibility, some also wind up in trouble through no fault of their own (job losses, medical bills, etc.). It is bad enough that they find themselves in this position. It is worse that the current judicial system would penalize them by charging 12% on the amount owed – they may never get out from under their predicament.

AB 456 deals with this problem by allowing interest rates to fluctuate with the average interest rate for six-month treasury bills so that the rate will go up in the future as interest rates go up, and stay at a more reasonable rate when investments give a smaller return.

Keeping Wisconsin Families Safe

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Testimony of Paul E. Sicula
on behalf of the
Wisconsin Academy of Trial Lawyers
before the
Assembly Judiciary Committee
and
Senate Judiciary, Corrections & Privacy Committee
on
2003 Assembly Bill 456 and 2003 Senate Bill 231
August 21, 2003

Good morning, Representative Gundrum and Senator Zien and members of the Committee. My name is Paul E. Sicula. I am the legislative representative of the Wisconsin Academy of Trial Lawyers (WATL). On behalf of WATL, I thank you for the opportunity to appear today to testify against Assembly Bill 456 and Senate Bill 231.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

The Wisconsin Academy of Trial Lawyers is opposed to AB 456 and SB 231, which changes the interest rate on judgments and settlement offers from the current 12 percent rate to a rate of 2 percent plus the 6-month Treasury Bill rate.

The interest rate on judgments and settlement offers should serve two purposes. First, it should be set at such a rate that the prevailing party (either an injured plaintiff or corporation trying to collect a debt) will receive a reasonable return on the money owed by the debtor or defendant. Secondarily, it should be set at such a rate so as to discourage frivolous appeals of legitimate verdicts and legitimate attempts to collect debts by businesses. If the rate is not high enough and the defendant/debtor can reap a greater return on its money through other investments, there is a great monetary incentive to appeal the case or drag out the settlement process, even if there is little chance that the judgment will be overturned or modified.

The 6-month Treasury Bill rate, as of August 14, 2003 is 1.053 percent, which means the judgment rate under AB 456/SB231 would be 4 percent. A rate so low it serves to penalize successful claimants while rewarding defendants and debtors. The current 12 percent interest judgment rate may strike one as high, however, consider that interest rates consumers pay on credit cards is usually well over 12 percent, most are between 14 and 18 percent. No attempt has been made to lower credit card interest rates.

The interest rate on judgments and settlements wasn't designed to penalize defendants, but it should reflect the value of money, especially the value of investment dollars. The 6-month Treasury Bill is one of the lowest interest rates available in the financial market and certainly doesn't reflect how money is invested.

WATL has also surveyed post-judgment interest rates in other states and 32 states have fixed interest rates, with the majority in the 10 to 12 percent range. Wisconsin rates are not out of line with other jurisdictions.

We urge the committees not to pass AB 456 and SB 231.

TESTIMONY OF MIKE CROOKS RELATIVE TO STATUTORY INTEREST RATE LRB 3110/1 ASSEMBLY BILL 456

The Wisconsin Supreme Court has recognized that the purpose of sec. 807.01 is to encourage pretrial settlement.[1] The court has made it equally clear, however, that sec. 807.01(4) is not intended to force a party into settlement of a suit that would more appropriately be resolved at trial.[2] Unfortunately, forced settlement is precisely what is occurring due to defendants' fear of the current statutory interest rate of 12%.

The 12% interest rate simply cannot be justified in today's economy. When subsection (4) first went into effect, the 12% interest rate made sense. At that time, the interest rate on a 6-month treasury bill was fluctuating around 10%.[3] The 2% premium to the treasury bill rate afforded by the statute was effective in encouraging pretrial settlement without forcing it upon the defendants.

However, as the economy has struggled through the burst of the dot-com bubble, numerous corporate accounting scandals, the tragedy of Sept. 11, and a war with Iraq, interest rates have plummeted. Today, the interest rate on a 6-month treasury bill stands at just 1.04%.[4] The 12% yield under the current offer of settlement statute far exceeds that of any "safe" investment in the present-day market. Furthermore, the 12% rate of return on an offer of

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[1] Nelson v. McLaughlin, 211 Wis. 2d 487, 501, 565 N.W.2d 123, 130 (1997)

[2] Id.

[3] Federal Reserve Statistical Release, Historical Data, Monthly Auction Average Annual Yield of a 6-month U.S. Treasury Bill (2003) at http://www.federalreserve.gov/releases/h15/data/m/tbaa6m.txt

[4] Federal Reserve Statistical Release, Selected Interest Rates (Daily) (2003) at http://www.federalreserve.gov/Releases/H15/update/.

settlement is guaranteed if a plaintiff's recovery exceeds his statutory offer by even the slightest of amounts.

Unfortunately, the harm caused by the 12% statutory interest rate goes beyond simply forcing defendants to settle lawsuits. Because the 12% interest accrues until the amount recovered at trial is paid, it also forces defendants to forego appeals that could properly absolve them of liability. Thus, the current high rate of interest impinges upon a defendant's opportunity for vindication at both the trial and the appellate level.

One additional feature of the 12% interest rate that renders it unjust is the one-sided nature of its application. While the language of the statute neutrally speaks of a "party" that makes an offer of settlement, in reality it is only plaintiffs that can recover an amount "greater than or equal to the amount specified in the offer of settlement." It is understandable to provide this exclusive, plaintiffs-only benefit at a reasonable rate of interest in order to encourage settlement, but it is altogether unjust to offer it at an interest rate of 12%.

If Assembly Bill 456 is passed, sec. 807.01 will continue to encourage the settlement of lawsuits. However, it will do so by providing a reasonable premium for unaccepted settlement offers rather than the current excessive rate of 12%. Furthermore, unlike the original statute, the amended law proposed by Bill 456 will allow the statutory interest rate to change with the times. Thus, should interest rates become excessively high or excessively low in the future, there will still be the same incentive for both plaintiffs and defendants to settle cases.

In conclusion, Bill 456 should be passed because it will provide a satisfactory incentive to settle civil cases without chilling the opportunity of defendants to vindicate their rights at the trial or appellate level.