

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Agriculture and  
Insurance  
(SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr\_AC-Ed\_RCP\_pt01a
- > 05hr\_AC-Ed\_RCP\_pt01b
- > 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

> Committee Hearings ... CH (Public Hearing Announcements)

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> Committee Reports ... CR

> \*\*

> Executive Sessions ... ES

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> Record of Comm. Proceedings ... RCP

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INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

> Appointments ... Appt

> \*\*

> Clearinghouse Rules ... CRule

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> Hearing Records ... HR (bills and resolutions)

> **05hr\_ab1074\_SC-AI\_pt02**

> Miscellaneous ... Misc

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**Vote Record**  
**Committee on Agriculture and Insurance**

Date: 3-6-06

Moved by: Kedzie

Seconded by: Brown

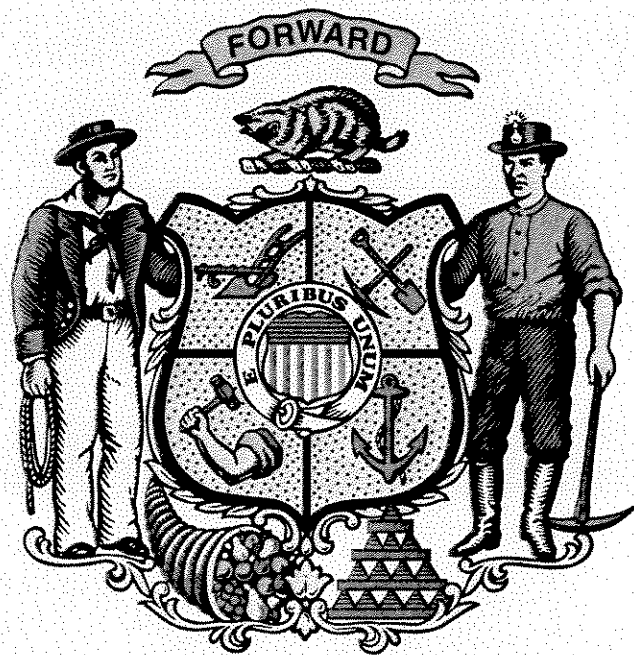
AB 1074      SB \_\_\_\_\_      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_      SJR \_\_\_\_\_      Appointment \_\_\_\_\_  
 AR \_\_\_\_\_      SR \_\_\_\_\_      Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
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- Be recommended for:
- Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement
  - Introduction       Rejection       Tabling       Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Dan Kapanke, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Luther Olsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jon Erpenbach	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mark Miller	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>4</u>	<u>3</u>	_____	_____

Motion Carried       Motion Failed



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**Testimony of Daniel A. Rottier**  
**on behalf of the**  
**Wisconsin Academy of Trial Lawyers**  
**before the**  
**Senate Agriculture and Insurance Committee**  
**Senator Dan Kapanke, Chair**  
**March 6, 2006**  
**2005 Assembly Bill 1074**

Good morning, Senator Kapanke and committee members. My name is Daniel A. Rottier. I am the managing partner of Habush, Habush & Rottier, in Madison, WI. I serve as the President of the Wisconsin Academy of Trial Lawyers (WATL). On behalf of WATL, I thank you for the opportunity to appear to testify today against AB 1074 further limiting contingency fees to attorneys handling medical malpractice cases.

Trial lawyers ensure access to the civil justice system for the powerless in America—working families, individual workers, and consumers who often lack the resources to take their grievances to court.

Trial lawyers play a valuable role in protecting the rights of American families. They champion the cause of those who deserve redress for injury to person or property; they promote the public good through their efforts to secure safer products, a safe workplace, a clean environment and quality health care; they uphold the rule of law and protect the rights of the accused; and they preserve the constitutional right to trial by jury and seek justice for all.

Trial lawyers who represent injured consumers in personal injury cases generally do not charge an hourly rate. They earn a percentage of their clients' compensation, ranging from no compensation — if the case is lost or taken on a pro bono basis — generally to one-third. This is known as the contingency fee. The contingency fee assures that anybody, no matter how rich or poor can afford a lawyer.

**“Key to Court Access.”** The contingency fee system provides injured consumers who could not otherwise afford legal representation with access to the courts. They provide thousand of Wisconsin citizens the “keys to the courthouse” each year. Average people do not have the money to hire a lawyer or finance a lawsuit, unlike their corporate adversaries. It is a system that allows injured consumers to find attorneys to take on the biggest corporations and institutions in the country.

The contingency fee system means lawyers will look carefully at the merits of a case before taking it because they will not get paid if they lose. A trial lawyer will investigate a case, conduct research, interviews and depositions and work long hours preparing the facts for trial. Typically, a trial lawyer will invest hundreds of hours on a client's case, this is especially true in medical malpractice cases where liability is rarely conceded and numerous expert witnesses are used to prove the case.

**Contingency fees are typically moderate and fair.** In a carefully-designed, systematic study of contingency practices in this country, Professor Herbert M. Kritzer found that "a contingency fee of 33% was by far the most common, accounting for 92% of those cases. Five percent of the cases called for fees of 25% or less, 2% specified fees around 30%, and only 1% specified fees exceeded 33%." Kritzer, "The Wages Of Risk: The Returns Of Contingency Fee Legal Practice," 47 *DePaul L. Rev.* 267 (Winter 1998).

In Wisconsin, a contingency fee agreement must be in writing and is agreed upon even before the lawyer starts the case. Wisconsin already has a limit on attorney fees in medical malpractice cases. Current law provides that attorneys receive 1/3 of the first \$1,000,000 recovered; twenty-five percent of the first \$1,000,000 recovered if liability is stipulated within 180 days after the date of filing of the original complaint and not later than 60 days before the first day of trial; and twenty percent of any amount in excess of \$1,000,000 recovered. What reasons are there to further reduce contingency fees in medical malpractice cases?

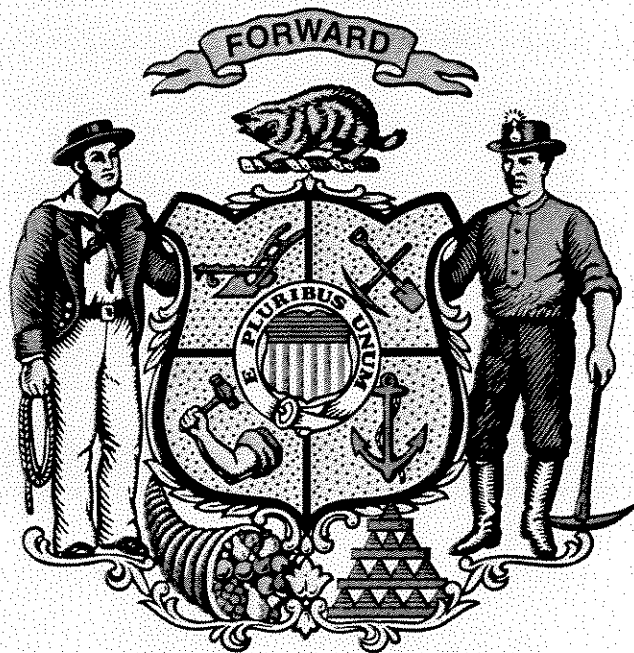
Further, this is a one-sided attack. No one is discussing the huge defense costs that add to the cost of malpractice insurance. The current proposal is based on contingency fee rates in California. The Foundation for Taxpayer and Consumer Rights has shown in California that **malpractice caps result in a smaller fraction of premiums being used to pay claims and a higher percentage devoted to insurer profit and insurance defense lawyers**

- During the first twelve years of California's malpractice law, insurers used 68.6% of doctors' premium to pay for profit, overhead and defense costs; *only thirty-one cents of every premium dollar actually paid injured victims' claims.*
- California insurers now spend approximately 35% of every premium dollar fighting claims, while the national average is 21%.

In Wisconsin, look at what the medical malpractice insurance industry spends on victims versus defense costs, overhead and profits. Take the Physician Insurance Company of Wisconsin (PIC), the largest malpractice insurance company. In 2004, PIC reported to the Office of the Commissioner of Insurance a loss ratio of 32 of their premiums earned in Wisconsin. They reported taking in over \$39.7 million in direct premiums earned and paying out \$12.6 million in direct losses. That means the remaining money is available for defense costs, overhead and profit. What has this meant to PIC? PIC began 20 years ago by the Wisconsin Medical Society and other health care providers. It began by raising just over \$4 million in stock equity. Now, PIC has grown to \$277 million in assets. The reported sale to Pro-Assurance for \$5,000 a share could generate over \$100 million to shareholders, most Wisconsin health care providers. That is an investment increase of 2500 percent.

In addition, in every malpractice case filed in Wisconsin, there are generally at least two sets of defense lawyers. They each hire experts, file motions and participate in all cases. This added expense has meant the Fund now hires separate counsel on all claims and incurs a loss expense on claims with no Fund indemnity payments. This has meant that the Fund is spending more money defending claims than ever.

The Legislature appears willing to allow the defense to spend whatever it takes to win, but wants to restrict what injured patients can agree to pay their attorney. This certainly flies in the face of a free market system. We urge Legislators to oppose this unfair proposal.





**WISCONSIN  
LAWYERS**  
STATE BAR of  
WISCONSIN\* EXPERT ADVISERS.  
SERVING YOU.

To: Members, Senate Committee on Agriculture and Insurance

From: State Bar of Wisconsin

Re: Position Statements on AB 1072 – collateral source rule, AB 1073 – caps on noneconomic damages and AB 1074 – caps on attorney fees.

Date: March 6, 2006

The State Bar of Wisconsin through its Board of Governors requests that you **vote against** Assembly Bill 1072 – collateral source rule, Assembly Bill 1073 – caps on noneconomic damages and Assembly Bill 1074 – caps on attorney fees. We again express disappointment that these proposals were rushed through the legislative process with little to no input from the public.

**AB 1072 – (Collateral Source Rule)** The State Bar of Wisconsin supports the collateral source rule which bars reduction of awards by payments from collateral sources that do not have subrogation rights. The fact that payments are received from a collateral source is irrelevant in the determination of negligence or the amount of damages. The responsibility of a tort-feasor to pay damages caused should not be lessened by the victim's prudence in planning for contingencies.

**AB 1073 – (Caps)** The State Bar of Wisconsin generally opposes legislatively set limits on non-economic damages. The Bar believes that caps on non-economic damages run counter to the right of obtaining justice "completely and without denial." Such caps set in place an arbitrary pretrial limit when those decisions are best decided by a jury and a court of law. In addition, caps on non-economic damages place an unnecessary hardship on the most seriously injured. Statutory caps are inconsistent with the nature of non-economic damages which are more difficult to quantify.

**AB 1074 – (Contingent Fees)** – Attorney fees are a matter of contract subject to judicial review and control; they should not be regulated by the Legislature. Furthermore, limits on contingent fees may adversely affect the ability of an impecunious victim to get representation to prosecute a claim. For many, the contingent fee is the key to the courthouse door.

If you have any additional questions, please contact State Bar of Wisconsin Public Affairs Director Lisa Roys at 609.250.6128 or [lroys@wisbar.org](mailto:lroys@wisbar.org).

**State Bar of Wisconsin**

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