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Info. Hearing (01/12/2006) (Invest Wisconsin)

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Job Creation, Economic Development and Consumer Affairs (SC-JCEDCA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

To: Members Senate Committee on Economic Development
From: Peter Thillman, Dean, Workforce Solutions, Lakeshore Technical College
Date: January 12, 2006
Re: TESTIMONY IN SUPPORT OF INVEST WISCONSIN

First of all I would like to welcome the committee to Manitowoc. It is good to see elected officials taking time out of their normal legislative activities to gather first hand the local concerns for the future of the state of Wisconsin. So once again welcome to Manitowoc.

The Invest Wisconsin initiative addresses two key areas important to Lakeshore Technical College and the economic vitality of the lakeshore. Those two areas deal with the workforce and entrepreneurial climate.

Wisconsin's climb out of a recession coupled with the unique demographic phenomena of the baby boom generation, places the viability of our local economy in jeopardy. Increasing numbers of skilled job opportunities, coupled with an existing worker shortage threatens to derail our local and for that matter statewide economic recovery. The situation will only worsen as the baby boomers begin there slow, but sure exit from the workforce. Industry's greatest need is a skilled, productive workforce to meet the challenges of tomorrow.

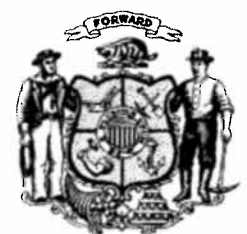
Today's and more importantly tomorrow's workers have a much higher skill and productivity expectation than that those workers of a generation ago. It becomes critical that business, education, and government focus intensely on workforce skill development, and work cooperatively to develop regional and perhaps statewide best practices to deliver these future skill sets. Workforce development is no longer a luxury especially in the globally competitive marketplace, skill development must be ongoing and effective, if Wisconsin hopes to compete in the global market. Invest Wisconsin sees the importance of workforce development and I encourage further development of innovative workforce strategies. Innovation will help drive workforce skill development.

Act 255, really brought much needed attention to the entrepreneurial possibilities. Wisconsin was built on the shoulders of great entrepreneurs but we over the course of the years forgot about cultivating and growing our own talent. Act 255 refocused our attention on Wisconsin's greatest economic resource, our citizens, those individuals willing to take that calculated risk to start a business and create new family supporting jobs. I encourage the Legislature and Governor to continue the commitment to entrepreneurial development, we have just scratched the surface of our potential, but we must continue to push the envelope on entrepreneur development.

Michael A. Lanser, Ed.D., President



WISCONSIN STATE LEGISLATURE



**Public Hearing on *Invest Wisconsin*
Manitowoc, Wisconsin
January 12, 2006**

Written Testimony of

Michael J. Fredrich
President
Manitowoc Custom Molding, LLC
1315 S 41st Street
Manitowoc, Wisconsin 54220

General Observation

The economic proposals offered in the economic development package called *Invest Wisconsin* are at the same time laudable and quixotic. It is commendable that our elected representatives recognize the business climate in Wisconsin is in a state of malaise and has been for some time. Unfortunately, the elements of the plan do not address the fundamental problem we have in this state, to wit; all levels of government—state and local—spend too much money and our tax burden is too high. It is that simple. No amount of targeted tax credits, regulatory reforms, job training programs, technology alliances, state “investment” in high-tech startup companies, or broadband deployment will change the fact that Wisconsin is not an attractive place in which to do business. In that sense the plan is quixotic. The proposals will do nothing to significantly improve the business climate in this state.

The state has languished in the top 5 highest taxed states for longer than I can remember. If we are to change we need to do more than nibble around the edges of the problem. We need to make changes that will positively affect all businesses in the state—not just the anointed businesses in the *Invest Wisconsin* plan.

Taxes are too high and people are voting with their feet

The most recent issue of *The Wisconsin Taxpayer* reveals a disturbing trend. The state population is not growing. Over the 5-year period 1995-2000 the net population increased by 7,282 people. We lost one congressional seat. Over the 5-year period 330,826 people left the state and 338,108 entered the state.

So who comes to Wisconsin? It should be no surprise that if you have a very generous social safety net vis-à-vis surrounding states you will attract lower income, less educated people which is precisely what is happening.

Who is leaving reveals more about the tax climate in this State. People with incomes greater than \$75,000 leave. People with incomes greater than \$200,000 leave at a much faster rate.

People with higher education (which usually correlates to higher income) leave. Very few high net worth people retire here. Over the 5-year period Wisconsin lost people with a combined net worth of \$4.72 billion. If you do not think this out-migration is due to the high taxes in this state you have your head in the sand.

There is much hand-ringing over the “brain-drain” in Wisconsin. We have a good and readily accessible public university system which produces high quality graduates. Why do they leave? They leave because there are better opportunities elsewhere. They leave because they can make, *and keep*, more of their earnings elsewhere. A couple with a combined income of \$150,000 living in a \$500,000 home will pay state income and property taxes totaling \$20,382 in Wisconsin. In Minnesota they would pay \$15,130. In Colorado they would pay \$8,019.

If the state does not change its high tax status nothing will change. The burden of decades of high taxes has resulted in a stagnant economy. On a per capita basis we rank 8th highest in state income taxes, 11th highest in property taxes, and 2nd highest in gasoline taxes. Any one of these rankings would be troubling but combined they are toxic to economic growth.

Spending is the problem

The sad fact is that despite the high taxes in this state we have a \$1.3 billion dollar deficit. How did we arrive at this state of affairs? The simple, and correct, answer is government (both state and local) spends too much money. During the 10-year period 1991-2000 total state spending increased 77% from \$6.3 billion to over \$11.2 billion—an average of 7.7% per year. Over that same period inflation, as measured by the consumer price index, increased an average of 2.78% per year. State spending increased at a rate nearly 3-times the rate of inflation. No wonder we have a problem.

The solons in Madison will defend their spending spree by pointing out that during that period the state committed to fund an average of two-thirds of the revenue needed to run the school districts. That is true and if you recall there was a reduction in property taxes. However, it did not take long for property taxes to creep back up to their prior levels as is evidenced by our 11th highest ranking in property taxes.

Excessive spending is not a Democratic or Republican issue. Both parties are equally complicit. Neither has demonstrated a resolve to curtail spending. Unless this problem is addressed, Wisconsin’s structural disadvantage vis-à-vis other states will continue. We will continue to languish in our little socialist enclave.

Conclusion

The proposals offered under the *Invest Wisconsin* plan will not do anything to improve Wisconsin’s economic status. The program does not address the fundamental problem—high taxes and high spending. Unless these problems are addressed the economic malaise, brain-drain, and out-migration of capital will continue.

Suggestion—TABOR is the only way out

It is unfair to criticize an effort without offering an alternative. It is clear the state and local governments spend too much money and as a result taxes are too high. It is also clear that our

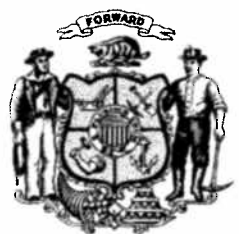
elected representatives are either not capable or unwilling to address this problem. The only way out of this mess is to incorporate strong spending limits into our state constitution through a taxpayer bill of rights amendment—TABOR. This action would fundamentally change the spending landscape in Wisconsin which must happen if we are to progress. It has worked successfully in other states and it will work here. Spend your efforts on TABOR and do not waste your time with cosmetic feel-good programs like *Invest Wisconsin*.

Respectfully submitted,

Michael J. Fredrich



WISCONSIN STATE LEGISLATURE





Wisconsin Economic Development Association Inc.

TO: Members, Senate Committee on Economic Development

FROM: Peter Thillman, President, WEDA

DATE: January 12, 2006

RE: **Testimony in Support of Invest Wisconsin**

Truly the 2003-2005 Legislative Session was the most pro-economic development session in recent memory. We've all learned the important lesson about economic development: there is no "magic bullet" to create quality jobs and entice additional investment. *Creating quality jobs and investment requires the right pro-growth environment*, and it is not just simply tax structure or state incentives that make growth happen. Economic development, expanding the workforce, and enticing additional investment are the result of many variables aligned to the same strategic vision.

The Invest Wisconsin program is a strategy that sees the big picture, taking six areas critical to economic vitality and establishing a road map to a brighter future. In order to strengthen and expand Wisconsin's economy, we must address those areas that immediately come to mind: tax, judicial, and regulatory reform. But we must also address workforce issues: training for today and the needs of tomorrow. A well-trained, technically savvy workforce is the lynchpin to Wisconsin's economic future.

Infrastructure, too, plays a critical role. First-rate rails, roads, and ports are still critical to the economic well-being of Wisconsin, expediting the flow of goods and services between markets. Getting goods to market requires more than a robust transportation system of integrated road, water, and rail. Our new economy necessitates that every community have access to broadband. Information is the commodity of the future and our citizens need the ability to get that commodity to the market.

Another piece that fills the vision of Invest Wisconsin is capital investment. Creating and encouraging alternative sources of capital for Wisconsin's young and growing businesses are crucial building blocks to construct a thriving entrepreneurial culture.

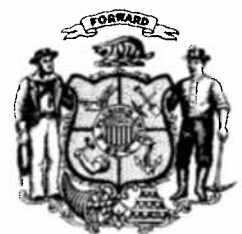
The past few years highlighted the need for a comprehensive strategy to expand the Wisconsin economy. That strategy started to become a reality in this past session. I must commend the legislature and the Governor for enacting landmark pro-economic development legislation ranging from TIF and regulatory reform, to corporate tax treatment, angel investment and workforce investment. These are but the first few steps in making Wisconsin a better place for business and creating quality jobs. Moving forward, we must continue to address those six areas critical to Wisconsin's economic development climate:

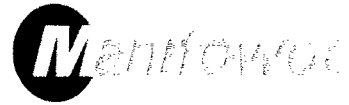
1. Tax reform: use the tax code to reward the entrepreneurial spirit in the form of tax credit incentive reform
2. Regulatory reform: continue to build on the progress of the Job's Bill.
3. Judicial Reform: Enact changes much like the Job Preservation Act and restore the caps on Medical Malpractice awards to bring Wisconsin in line with the rest of the country.
4. Workforce Training: continue to emphasize the importance of life-long skill development and prepare today's workforce for tomorrow's challenges.
5. Infrastructure Enhancement: Maintain Wisconsin's world class transportation network, and ensure that our electrical network is capable of sustaining our future growth. Improve communication globally by providing all citizens access to broadband.
6. Capital Investment: Build on the successes of Act 255 and begin to nurture and grow that entrepreneurial spirit throughout the state.

Thank you for your time and I will be glad to answer any questions.



WISCONSIN STATE LEGISLATURE





Testimony

Prepared for:

Committee on Job Creation, Economic Development and Consumer Affairs
Government of Wisconsin
Manitowoc, Wisconsin
January 12, 2006

Prepared by:

Terry Growcock
Chairman and Chief Executive Officer
The Manitowoc Company

Introduction

From my perspective, there are five major characteristics of Wisconsin's business climate that place The Manitowoc Company at a significant disadvantage relative to our competition:

1. Excessive corporate taxation
2. Escalating costs of health and pension benefits
3. Escalating costs of actual or threatened tort litigation
4. Escalating compliance costs for regulatory mandates
5. Rising energy costs

The National Association of Manufacturers (NAM) estimates that these external costs add at least 22.4% to unit labor costs of U.S. manufacturers (nearly \$5 per hour worked) relative to our major foreign competitors.¹

Our primary competitors, based in Germany, United Kingdom and Japan, operate under a more favorable and business-friendly climate, and certainly even the environment in other states is more favorable and business friendly.

Wisconsin's Business Climate

As mentioned above, there are a number of factors in Wisconsin's business climate that pose ongoing challenges for The Manitowoc Company.

1. Excessive corporate taxation

i. State Taxation

Wisconsin's corporate tax rate is high at 7.9%. More problematic than this tax rate is the inconsistent way in which state tax law is applied to businesses by the Department of Revenue (DOR). According to Wisconsin Manufacturers and Commerce (WMC), "in one of the highest taxed states in America, it is critical that tax collectors and the Wisconsin Department of Revenue provide fairness, justice and impartiality for business and individual taxpayers. Unfortunately that seems to be the exception rather than the rule as increasingly aggressive tax collection tactics have turned predatory in recent years. This creates a hostile environment for business."²

As an example, the statute of limitations for the Department of Revenue to conduct an audit at Marinette Marine was scheduled to run out in October of 2004. In October of 2004, the Department of Revenue requested an extension, which we declined since they had four years to start the audit. Manitowoc was then handed a \$2 million jeopardy assessment. As a point of

¹ *How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness*, Jeremy Leonard, National Association of Manufacturers, 2003

² *Tax Collection in Wisconsin: Providing Fairness for Taxpayers*, Wisconsin Manufacturers & Commerce, 2006

comparison, our previous audit at Marinette Marine resulted in an assessment of \$7,000. To date the Marinette Marine audit has not started!

Furthermore, while the corporate tax rate has not changed significantly in recent years, the state government has increased revenue by imposing user fees rather than increasing taxes. Re-labeling taxes as user fees is just hiding the issue, not addressing it.

Wisconsin is at a material disadvantage when The Manitowoc Company is considering it as a potential location for investment. While the high corporate tax rate alone may not be the deciding factor, when combined with other factors like those itemized above, Wisconsin is not a particularly business-friendly state as compared to others in which we operate.

The high personal tax rate also has a negative impact on our organization. We are facing significant challenges in attracting and retaining highly qualified candidates. Wisconsin's high tax rate can deter good candidates from relocating to this state.

One clear opportunity for the state to reduce its taxes is to address the runaway costs of employee benefits and retirement plans in the public sector. They are well above the norm of anything we see in the private sector, particularly as we rationalize our benefits in order to compete in a global market.

ii. Federal Taxation

The implications of US tax rates on Manitowoc's business become even more apparent when considering our global operations. The 2005 US country corporate tax rate compares very unfavorably with those of the other countries in which we operate:³

US	39.0%
Germany	38.5%
Italy	37.3%
France	34.9%
Australia	30.0%
UK	30.0%
Portugal	27.5%
Singapore	20.0%
China	none ⁴

Obviously our high tax rate factors negatively into the consideration of the US as a location to expand our manufacturing presence in the US relative to our other locations. With such a high rate, we are at a clear disadvantage

³ Deloitte, 2005; Includes the impact of state/municipal income tax rate

⁴ China has granted a tax holiday for 2005 and 2006 during which we will pay no income tax. For 2007 through 2009, our rate will be 12%, based on 1/2 of the normal income tax rate. For 2010 and beyond, we will pay income tax at the full rate of 24%.

compared to our competitors, the vast majority of whom are located in countries with lower corporate tax rates.

Another large disadvantage of our tax system is the allowance for a foreign tax credit to avoid double taxation. Not only do we always have to pay the higher of the tax rates, but the laws are such that it is extremely difficult for leveraged companies like ours to take full advantage of this credit. Many other countries have an exemption system to avoid double taxation which provides an advantage to competitors in that country.

2. Escalating costs of health and pension benefits

Thanks to prudent management, The Manitowoc Company's medical expenses have been growing slightly lower than the national trend of 13-16%, but still at a rate in excess of wage increases. Dental expenses have also grown, at an average annual rate of approximately 7%.

Above and beyond the direct costs of providing health and pension benefits, the regulatory costs of compliance are becoming more cumbersome every year. The Manitowoc Company estimates that it spends well over \$600,000 each year to comply with FMLA, DOL, IRS and FASB.

These rising costs are distressing, since they increase the disadvantage we face relative to our global competitors. Our non-domestic competitors rarely provide comprehensive health benefits or pension plans, and have other competitive advantages such as lower labor costs and often a 6-day workweek.

We are particularly frustrated at the significantly higher rates we pay in Wisconsin relative to the other states. Wisconsin has the 6th highest cost for single coverage.⁵ Even if Wisconsin were at the average in the USA for single medical coverage, The Manitowoc Company would save approximately \$1.5 to \$2.0 million annually. By the time we blend in all of our employees with family coverages, we would save approximately \$2.2 to \$3.0 million annually.

3. Escalating costs of actual or threatened tort litigation

At The Manitowoc Company, we take pride in our commitment to a healthy workplace for our employees and espouse the highest standards of safety in our operations and our products. However, our strong performance in this regard bears little weight in the U.S. tort system, which consistently fails to prove demonstrably negligent behavior before assigning damage awards to plaintiffs. The resulting litigious climate exposes organizations like The Manitowoc Company to unreasonable risk from unsubstantiated lawsuits. The associated resources (legal counsel, insurance costs, etc.) to protect ourselves against this exposure have a significant negative impact on our profits.

⁵ Agency for Healthcare Research and Quality, Center for Financing and Cost Trends, Henry J. Kaiser Family Foundation, 2003

Recent examples of legal rulings that contribute to a negative business climate for The Manitowoc Company include the following:

- i. In March of 2005, the Wisconsin Supreme Court effectively reduced the legislative standard for allowing punitive damages. Wisconsin law states:

“the plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the right of the plaintiff.”

Nevertheless, the court held that “the legislature did not intend an ‘intentional disregard of right of plaintiff to require intent to cause injury to the plaintiff.’”

- ii. In July 2005 the Wisconsin Supreme Court (*Ferdon v. Wisconsin Patients Compensation Fund*) struck down a limit on noneconomic damages (e.g. pain and suffering). The court struck a law that limited noneconomic damages in medical malpractice cases to \$350,000. The court found that the law violated the equal protection guarantee of the Wisconsin Constitution because the decision to enact the award limit was irrational. (Note that a majority of state high courts, including those in Alaska, California, Colorado, Indiana, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, Ohio, Virginia, and West Virginia have, unlike Wisconsin, determined that reasonable limits do not violate equal protection under a rational basis test.)
- iii. Also in July 2005 the Wisconsin Supreme Court (*Thomas v. Mallett*) ruled that manufacturers of lead paint could be liable despite the inability of the plaintiff to point to which company's paint caused the injury, applying a “risk contribution theory.” The essence of the theory is that as between the plaintiff and the defendants who may have provided the product which caused the injury, the interests of justice and fundamental fairness demand that the latter should bear the cost of the injury. This is essentially a burden shifting ruling and possibly could impact any industry that manufactures a potentially harmful product.

We are severely disappointed in Governor Doyle's veto of proposed legislation that was intended to redress the inequities inherent in these legal rulings. Just last week, he vetoed a bill that would have set reasonable new standards for what a plaintiff would have to prove to collect damages in a civil suit and limit liability to products manufactured and sold within 25 years of an injury. The governor's veto supports an unfair and frankly un-American "guilty-until-proven-innocent" standard for manufacturers.

4. Escalating compliance costs for regulatory mandates

Due to the rising cost of regulatory compliance, The Manitowoc Company is having to adjust our spending priorities. We estimate that our spending on technology, services, and internal structures for Sarbanes-Oxley compliance alone exceeded \$13

✓ Risk contribution
✓ Product liability
✓ Med/Mal

million since 2003. Regulatory compliance costs related to environmental protection, consumer safety and workplace safety are also rising.

All US Manufacturers are facing this burden. In Wisconsin specifically, we face additional regulatory costs. The government's FMLA guidelines, for example, are more onerous than those imposed at the federal level, requiring additional administrative time and expense. Another example is the state's regulations allowing employees to see any doctor they choose in Workers Compensation cases. We estimate that The Manitowoc Company would save \$200,000 in our case management costs if we were allowed to direct our Wisconsin employees to company-selected doctors, like we can in the other states in which we operate.

The funds we are now allocating to regulatory compliance would in prior years have gone to efforts such as product innovation or business development. While we recognize the importance of the intent behind Sarbanes-Oxley and other legislation, we are burdened not only with the compliance costs, but also with the opportunity cost for those investments we no longer have the resources to pursue.

Our global competitors, meanwhile, do not bear the same level or burden of regulatory compliance. Although Manitowoc supports the efforts of regulators to protect the investor, we are concerned about the promulgation of unworkable rules that restrict the ability of executives to effectively run their businesses and compete in the global marketplace.

5. Rising energy costs

Due to rising energy costs, we are reassessing both our supply chain strategy and our off-shore manufacturing operations. It no longer makes economic sense to manufacture product here to ship to our growing percentage of global customers – the energy costs related to transportation are simply too high. The result is an increasing investment by The Manitowoc Company in our overseas operations.

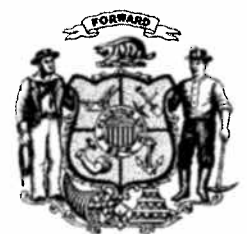
We would be more likely to reconsider such a move if the state government took a leadership role in aggressively pursuing adequate, accessible and affordable energy sources. Distribution lines need to be expanded, and investment should be made in alternative energy sources such as wind and nuclear power.

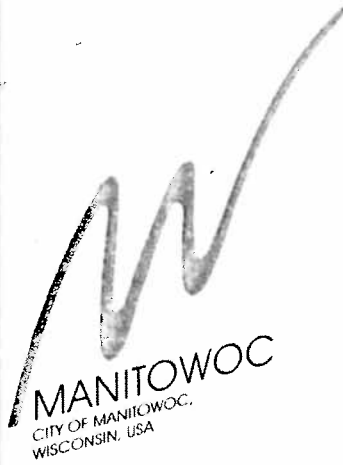
Conclusion

These issues weigh heavily in our discussions on our growth strategies and plans for business development. The Manitowoc Company has a proud history of being a Wisconsin company, however if the above issues are not addressed, we will need to make some difficult decisions about where we allocate future investments.



WISCONSIN STATE LEGISLATURE





Good afternoon. Please allow me to thank Senator Ted Kanavas and the members of the committee for traveling to Manitowoc to hold this hearing on the “Invest Wisconsin” package of legislation that has been rolled out for our review and hopefully positive action by the legislature.

Thanks, too, to my friend Neil Verfuert for hosting the hearing here at Orion Energies. Orion is certainly a hallmark of the resurgence of the economy both in Manitowoc County and across the state.

My name is Kevin Crawford. I have been mayor of Manitowoc since 1989, and believe me, the people of our city have seen the best of times and they have seen the worst of times.

I am happy to report that your committee is here in my hometown during some of the best of times.

First, to address “Invest Wisconsin”. After a thorough review, I am very pleased to see a package that has been assembled by the Republicans that deals with six very important areas of economic development. The scope of this list of priorities includes elements of Governor Doyle’s “Grow Wisconsin” initiative and, therefore, I hope that it gains strong bipartisan support.

I see this effort, however, as only a first step, albeit a good first step, in taking care of issues of concern that should quickly be gotten off the table and put into place.

Manitowoc is a unique place. It is truly a microcosm of Wisconsin in regard to its economic geography. The coast of Lake Michigan provides us with spectacular views and recreational opportunities. However, as any economic

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cartographer would tell you, it's far more economically beneficial to be surrounded by people and the markets they represent than it is to be surrounded by water.

And, therefore, in Manitowoc, we must work that much harder on economic development in order to be successful.

For example, our city is home to the second largest microfiltration plant in North America. This plant provides safe drinking water with an absolute barrier to cryptosporidium and giardia to our citizens and companies including Lakeside Foods, Cher-make Sausage Company and Busch Agricultural Resources. Due to our investment in technology, our plant is one of only five plants in our nation approved to operate unstaffed during second and third shifts.

And when our current project of providing safe drinking water to 71,000 citizens of the state of Wisconsin in Brown County is complete, our microfiltration facility will be the largest in the Western Hemisphere

Manitowoc is also home to the largest municipally owned electric generating facility in our state. In March, our new \$80 million, 65 megawatt generating plant will come on-line, pretty much assuring that our city will have the lowest electric rates in Wisconsin within a few years.

Our water rates are in the lowest quartile for surface water users; our sewer service rates in the bottom 30% statewide; and our taxes for city services are the lowest of any full service city.

As you know, my citizens endured the devastating impact of the offshoring of 1,400 jobs a few short years ago when then Newell Rubbermaid CEO Joe Galli announced he was shutting down what was once the world's largest and

**most profitable aluminum cookware manufacturer,
MIRRO.**

When Galli slammed the door shut on the futures of so many citizens of the Port Cities of Manitowoc and Two Rivers, many thought it was the deathnell for the Lakeshore. Today, what was record unemployment then, is now below the state average. Programs put together by local government in partnership with the state of Wisconsin and offered to those in private industry, have now employed so many people in our county that employers are importing employees from other states.

It should be clear that we know a bit about jobs creation in Manitowoc County, and we know that “Invest Wisconsin” is a good place to begin in regard to making our state stronger and more recession proof.

But we can’t stop here. Today I encourage your committee and both parties to further forge ahead to insure that even larger impediments to economic development are removed from Wisconsin’s path to success.

The soaring cost of health care resulting in skyrocketing health insurance premiums is the number one problem facing our employers today. And in a nation where the rich are getting richer and the poor poorer, the increased participation in premium payments by employees is tearing away at what is already limited disposable income accelerating a downward economic spiral.

In the more than sixteen years of negotiating with businesses on local expansion or start-ups in our community, private industry has never inquired about the level of local property taxes, but the cost of energy is always of primary concern.

As I have mentioned, Manitowoc controls its own destiny in regard to electric energy. It's a fact though, that the fastest growing portion of local electric bill is for the power that we must buy "off the grid" from private utility companies.

We must make no more mistakes like the sale of the Kewaunee Nuclear Power Plant. Wisconsin's electric infrastructure is at best fragile. Our employers have a better chance of competing with goods that are manufactured with energy that is priced at the cost of producing the power as opposed to whatever the market will bear.

Solid fuel should also be the focus of new generation in our state as opposed to natural gas. While natural gas offers cheap start-up costs in building new generation, the long-term cost of fuel has devastating affects on rates, and therefore, our ability to compete.

We all know that Wisconsin is a sprawling state with no focused wealth. Our poor land use policies have helped create this negative economic situation. New land use initiatives and the elimination of bad policy would be of strategic importance to our collective futures.

Finally, our state needs to work much harder at international trade and relations. Frankly, we do a very poor job in the area of understanding cultures and creating trading partnerships. We should identify our key trading allies and the clusters they do business with, and create a strategic methodology for increasing our export activity.

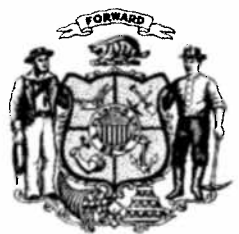
Thank you all for your public service and for the progress you are helping to make on the shores of Lake Michigan in beautiful Manitowoc in Wonderful Wisconsin.

*Public Hearing for the
Senate Committee on Job Creation, Economic Development and Consumer Affairs
January 12, 2006
Testimony of Mayor Kevin Crawford, City of Manitowoc*

“Invest Wisconsin” is a great beginning. The issues of health care, energy, land use and international trade will define our future as an economic power.



WISCONSIN STATE LEGISLATURE



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**Testimony of John C. Peterson
Wisconsin Academy of Trial Lawyers**

**Senate Committee on
Job Creation, Economic Development & Consumer Affairs
Thursday, January 12, 2006
Manitowoc, Wisconsin**

There has been much rhetoric bantered about Wisconsin's civil justice system. We hear the terms, "litigation crisis," "job killers" and "activist court," discussed at length. It is time to hear the facts. **There never was, nor is there now, a "litigation explosion."** It was a term invented by the insurance industry and its allies to push for changes in America's civil justice system under the banner of tort "reform."

Small Percentage of Injured Take Claims to Court

I repeat there never was a "litigation explosion." Researchers point out that to determine if there are a high number of court filings, we need to compare the number of lawsuits to the number of injuries that give rise to a legal action. Legal scholars suggest that only a small percentage of those who suffer injuries ever take their claims to court.

A massive study of the behavior of injured Americans in 1991 by the Rand Corporation Institute for Civil Justice found that only 1 in 10 injured Americans attempts to collect liability compensation from their insurance company and smaller number file a lawsuit. The majority of injuries that led to lawsuits occurred at work or from motor vehicle accidents. "In contrast, in non-work, non-motor vehicle accidents, only three injuries out of a hundred lead to liability claims," the report said.¹

For medical malpractice cases the statistics are similar. According to the Institute of Medicine between 44,000 and 98,000 deaths occur each year in U.S. hospitals due to medical

¹ Hensler, et al., *Compensation for Accidental Injuries in the United States*, Rand Corporation (1991).

errors.² Despite the amount of medical negligence currently harming patients in this country, very few victims file suit and those who do often have a very difficult time winning their cases. The 1990 Harvard Medical Practice study, which found that medical negligence in New York hospitals results in 27,000 injuries and 7,000 deaths every year, also found that eight times as many patients are injured by medical malpractice as ever file a claim; 16 times as many suffer injuries as receive any compensation.³

Tort Filings Decrease in Wisconsin

What do the facts show regarding tort case filings in Wisconsin? Tort claims are a decreasing number of cases within the Civil Justice system. The most recent data from the Director of State Courts Wisconsin study reveal, among other things:

- Torts, those cases that encompass product liability, personal injury and medical malpractice, made up 8,157 cases out of a total of 263,505 civil case filings, including uncontested small claims, in 2004, or 3 percent of civil case filings. (The cases are divided into six categories: Personal Injury/Property Damage (PI/PD), Contracts, Other Civil, Divorce, Other Family and Small Claims).⁴
- Tort filings have *decreased* over the last 15 years both in absolute numbers and as they relate to Wisconsin's population. In 1989, there were 10,295 tort cases filed compared to 8,157 in 2004.
- Most areas of civil cases showed small fluctuations in filings. Comparing years 1997 to 2004, while the number of tort cases has decreased, there was a total increase in civil filings. This was due to the following factors: an increase in the number of contract cases, primarily money judgments actions; increase in mortgage foreclosure actions; increases in other family actions, particularly for support/maintenance, harassment temporary restraining orders and increase in the number of eviction cases. (Attached chart)
- Civil cases comprise less of the workload of the circuit courts than 10 years ago while the number of criminal cases have increased.
- There has been a dramatic decrease in the number of civil cases filed from 1991 to 2004. In 1991 there were 359,232 civil cases filed, including uncontested small claims, while 263,505 civil cases were filed in 2004; a reduction of 95,727 cases.

Most changes in the data are predictable: changes in statutes affect the number of cases filed in certain categories, changes in economic conditions affect the frequency of actions such as debtor actions or mortgage foreclosures, and the Legislature's recent revisions in criminal penalties, all affect the workload of the courts.

² National Academy of Sciences Institute of Medicine, *To Err is Human; Building a Safer Health System* (Kohn, Corrigan, Donaldson, Editors) National Academy Press, Washington D.C. (1999).

³ Harvard Medical Practice Study, *Patients, Doctors, and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York*, Boston (1990).

⁴ While the Director of State Courts uses the same six categories of cases, it defines certain types of cases differently than Table 1. Specifically, the following changes have been made: Minor Settlements are moved from Contracts to PI/PD; TROs for abuse and harassment are counted as Other Family rather than Other Civil; and the Contracts category is limited to Money Judgments, Other Contracts and Debtor actions as they were listed prior to 1992. In its most current table, the Director of State Courts adds case types to form a Contracts/Real Estate category.

Not only have the absolute number of most civil cases decreased from 1991 to 2004, but the numbers have also decreased relative to the state's population. The most significant declines were in the areas of small claims, contracts and other civil cases.⁵ Tort cases declined from about 219 cases to about 148 cases per 100,000 residents, a decrease of 33 percent.

Tort Filings Small Part of the Court's Workload

Those claiming there is a "litigation explosion" have generally referred to an increase in tort cases, cases involving personal injury or property damage, rather than the full range of civil cases. As explained earlier, the absolute number of tort cases has declined. Tort cases made only 3 percent of civil case filings in 2004.

To put the 8,157 cases filed annually into perspective, it is important to compare that to the number of injuries occurring. The Consumer Product Safety Commission (CPSC) estimates that over 13.6 million Americans visited an Emergency Room as a result of an injury with a consumer product.⁶ Yet, only 120 product liability actions were filed in Wisconsin in 2004. That means only 2 product liability cases were filed in 2004 for every 100,000 Wisconsin residents.

Further, if you look at the statistics from Manitowoc County for 2004. There was no product liability case filed at all in county. Where is the problem? (attached chart)

In the area of medical malpractice, where there are millions of physician-patient contacts and thousands of hospitalizations each year leading to estimates that between 44,000 and 98,000 deaths occur each year in U.S. hospitals due to medical errors, there were only 221 lawsuits filed in Wisconsin in 2004.⁷ Again, in Manitowoc County, there was one medical malpractice filed in the whole county last year. Again, hardly a pressing problem.

The small number of medical malpractice lawsuits, despite the high number of medical

⁵ Small claims, contracts and other civil cases have experienced the biggest declines in the last 10 years. One reason for the big drop in contract cases from 1991 is probably related to the various changes in the jurisdictional amounts for filing small claims actions. The small claims jurisdictional amount increased twice during the mid-1990s, from \$2,000 to \$4,000 in 1994 and \$4,000 to \$5,000 in 1995. The good economy of the 1990s also helped decrease court filings for money judgments and other debtor actions. The biggest reason for the decline was the deletion of large claim garnishment actions from court filing data by 1993 Wisconsin Act 80. Under the new procedures, garnishments no longer require court action; the Clerk of Court handles all the details.

⁶ Consumer Product Safety Commission, "Estimates of Hospital Emergency Room Treated Injuries Associated with the Use of Certain Consumer Products Oct 1, 2002- September 30, 2003" 2003 Annual Report, located at www.cpsc.gov. CPSC lists the National Electronic Injury Surveillance System (NEISS) as the source of the information. The products include: child nursery, toys, sports and recreations activities and equipment, home communication, entertainment and hobby equipment, personal use items, packaging and containers for household products, yard and garden equipment, home workshop apparatus, tools and attachments, home and family maintenance products, general household appliances, space heating, cooling and ventilating appliances, housewares, home furnishings and fixtures, home structures and construction materials and miscellaneous.

⁷ Institute of Medicine, *supra* note 3.

errors, led Stephen Daniels and Joanne Martin, eminent scholars of the civil justice system, to conclude:

Contrary to the image animating the reform rhetoric, the empirical evidence indicates that medical injuries occur frequently; that most injured patients do nothing; that most claims actually made close without adjudication and without payment to the claimant; that few of the matters that reach jury trial stage result in a judgment for the plaintiff; that the amount of any compensation received is strongly tied to the severity of the injury suffered; and that the compensation received often falls short of economic losses.⁸

The largest number of tort cases result from motor vehicle crashes. There were 4,928 “personal injury, auto” cases filed in 2004. Compare that low number with the 55,258 persons injured and 784 killed in motor vehicle crashes in 2004.⁹ That means approximately 1 person out of every 11 injured or killed in a motor vehicle crash filed a lawsuit as a result.¹⁰ Despite the fact that 60 percent of all tort cases filed are automobile-related, no one has claimed there was an automobile insurance “crisis” in Wisconsin. In fact, Wisconsin consumers pay almost 30 percent less per year for automobile insurance than consumers nationwide, ranking fifth lowest in the nation for automobile insurance rates.¹¹ Wisconsin’s comparatively low cost of auto insurance shows how effective Wisconsin’s current civil system is in compensating injured consumers while leaving insurance premiums affordable.

Lead Paint Case

There has been much hyperbole regarding the impact of the *Thomas v. Mallet* case, 2005 WI 129. Despite the rhetoric, the case did not hold that lead pigment manufacturers “were liable.” It simply said that a brain-damaged child, exposed to lead paint, had a right to bring his case to court and allow a jury to hear the evidence of whether the lead pigment manufacturers should be responsible for placing this product on the market despite its dangers. The injured child still has to prove his case.

The Court allowed the case to proceed on a “risk contribution theory.” Was this a new theory? No. The Supreme Court adopted it in 1984 in a case involving diethylstilbestrol (DES). In that case, the plaintiff, a teenager, developed cancer of the vagina in 1975 due to her mother’s use of DES prior to her birth. The plaintiff’s mother could not remember where she purchased the DES or who manufactured it. The Court held that under the Wisconsin Constitution the injured plaintiff was entitled to a remedy because each defendant contributed to the *risk* of injury

⁸ Daniels and Martin, *Persistence is not always a virtue: Tort Reform, Civil Liability for Health Care, and the Lack of Empirical Evidence*, 15 Behav. Sci. Law, 14 (1997).

⁹ Wisconsin Department of Transportation (DOT), “2004 Wisconsin Traffic Crash Facts” pg. 2 (September, 2004).

¹⁰ Not all crashes that result in lawsuits are filed in the same year as the crash. Comparing the data from other years, however, shows a similar 1 in 11 ratio of lawsuits to injuries and deaths.

¹¹ National Association of Insurance Commissioners (NAIC) 2002 Report. The report examined automobile insurance rates for 2000.

to the public, the companies were in a better position to absorb the cost of the injury rather than to place the burden solely on the innocent plaintiff, and the cost of damage awards will act as an incentive to adequately test a product before it is placed on the market for general use.

The Supreme Court applied the same principles to lead pigment manufacturers because of the generic nature of the product and the passage of time. The case now simply proceeds to trial. No liability has been proven and the lead pigment manufacturers will be allowed to show that they weren't using the product at the time and are not liable.

The lead paint industry knew early on that white lead paint was a dangerous product. The Supreme Court opinion outlines from the early 1900s that paint manufacturers knew that white lead paint was "poisonous" to workers and residents of homes painted with lead paint. Yet lead paint manufacturers continued to market the lead paint, suppressed independent scientific studies and fought regulations and legislation that would have regulated or banned the substance. This is why it wasn't until 1978 that lead paint products were banned in the U.S., while many other countries banned its use in the 1920s and 1930s.

To argue this ruling is a "job killer" is nonsensical. The decision only applies to the makers of inherently dangerous products that are physically indistinguishable as to manufacturer and cause latent injuries. That would not apply to many products. It certainly does not have broad implications for most manufacturers. Again this is only the second time in 20 years that the Supreme Court has chosen to use it.

Again, if the Legislature is serious about solving this issue, then the Legislature should require that all insurance contracts for homeowners and landlords provide that lead paint is covered. Right now insurers have succeeded in defining lead paint chips under the "pollution exclusion clause," meaning there is no protection for children injured as a result of lead paint poisoning.

"Litigation Explosion" Myth Threatens Civil Justice System

The overwhelming evidence in this article shows there never was, nor is there now a "litigation explosion" in Wisconsin. While tort "reformers" still espouse their anti-civil justice system message, it has increasingly been shown it is fundamentally false. As legal journalist Kenneth Jost wrote, "[It is] the product of dubious anecdotes, questionable research, concocted statistics, factual and legal misstatements and a willful disregard of contradictory evidence."¹²

Wisconsin's tort "reform" measures have been enacted relying on a rhetoric fostering fear and anxiety, not on empirical evidence. There certainly is no justification for enacting additional

¹² Jost, *Tampering with Evidence: The Liability and Competitiveness Myth*, 78 A.B.A. J. 44 (1992).

“reforms.” Current court statistics show tort cases make up a small percentage of the courts’ caseload and the number of tort filings has actually decreased over the last 15 years. In other words, Wisconsin’s system of justice oozes consistency, stability and moderation from every seam.

Holding wrongdoers accountable for their actions and keeping the courthouse doors open to injured citizens are core American values. These are rights expressed in our Constitution that no Legislature should take away despite the request of big business. A strong civil justice system is good for Wisconsin citizens, good for the economy and the Legislature should not tampered with it.

Wisconsin Court Filings 1997 & 2004		
	1997	2004
Products Liability	127	120
Personal Injury, Auto	5,133	4,928
Medical Malpractice	232	221
Wrongful Death	113	88
Intentional Tort	353	312
Other Personal Injury	1,903	1,285
Asbestos	15	16
Property Damage	622	632
Minor Settlement	718	555
Total PIPD	9,216	8,157
Money Judgment	8,609	13,133
Other Contracts	1,648	1,747
Other Debtor Actions	915	573
Total Contracts	11,172	15,453
Condemnation Review	81	119
Foreclosure of Mortgage	5,021	11,162
Other Real Estate	1,065	964
Appeal Municipal Ct.	118	162
Admin. Agency Review	494	417
Declaratory Judgment	457	420
Unclassified Civil	2,060	2,180
Other TRO	335	243
Writ of Habeas Corpus	171	132
Other Extraordinary Writ	553	339
Name Change	1,351	1,642
Total Other Civil	11,706	17,780
Divorce	21,577	20,358
Total Divorce	21,577	20,358
Annul/Legal Separation	524	567
UIFSA - Incoming	639	1,184
Support/Maintenance	3,191	10,524
UIFSA - Outgoing	916	678
Paternity	14,773	14,361
Action to Modify Judgment	261	209
Unclassified Family	330	400
Domestic Abuse TRO	7,918	7,452
Child Abuse TRO	368	556
Harassment TRO	4,323	5,502
Combined Action TRO	24	11
Vulnerable Adult TRO	3	20
Total Other Family	33,270	41,464
Contested Claim under \$5,000	13,758	10,104
Replevin	830	1,292
Eviction	1,853	2,229
Arbitration Award	0	1
Unclassified (Adjustments)	467	75
Total Contested Small Claims	16,908	13,626
Uncontested Small Claims	139,782	146,592
TOTAL CIVIL/ FAMILY/SMALL CLAIMS	243,631	263,505