WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: March 25, 1998

TO: INTERESTED LEGISLATORS

FROM: Russ Whitesel, Senior Staff Attorney

SUBJECT: 1997 Assembly Bill 929, Relating to Liability of Shareholders to Corporate Employes

This memorandum describes the provisions of 1997 Assembly Bill 929, relating to liability of shareholders to corporate employes.

The memorandum also provides a brief legislative history.

A. LEGISLATIVE HISTORY

Assembly Bill 929 was introduced on March 18, 1998 by Representative Jensen; cosponsored by Senator Huelsman. The Bill was referred to the Assembly Committee on Consumer Affairs. A public hearing was held by the Consumer Affairs Committee on March 23, 1998. At an executive session held by the Assembly Consumer Affairs Committee on March 24, 1998, the Committee voted to recommend passage on a vote of Ayes, 5; Noes, 3.

B. PROVISIONS OF ASSEMBLY BILL 929

Current law, under s. 180.0622 (2) (b), Stats., imposes personal liability on each shareholder of a corporation, in an amount up to the value of shares that the shareholder owns, for any amount owed by the corporation to its employes for up to six months of work per employe. Assembly Bill 929 ***repeals*** this provision.

This statute was initially enacted in 1848.

Assembly Bill 929 ***retains*** the provisions of s. 180.0622 (2) (a), Stats., which states that unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation, ***except that*** a shareholder may become personally liable by his or her acts or conduct other than as a shareholder.

The legislation does not affect the provisions of ch. 109, relating to wage payments, claims and collections. Included in this chapter is s. 109.09, Stats., dealing specifically with employe wage claims and collections. This section provides authority to the Department of Workforce Development to investigate and attempt, equitably, to adjust controversies between employers and employes as to alleged wage claims. A copy of this section is attached to this memorandum for reference purposes.

If you have any questions regarding this legislation, please feel free to contact me directly at the Legislative Council Staff offices.

RW:rv:ksm;wu

Attachment

Assembly Hearing Slip

(Please print plainly)

Date: 3-23

Bill No. Or Subject AB 929

ROBERT GARVIN
(Name)

(Street Address or Route Number)

(City & Zip Code)

Rep. JENSEN
(Representing)

Speaking *in favor:* ☒

Speaking *against:* ☐

Registering *in favor:* ☐

Registering *against:* ☐

Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject AB 929

George Brown
(Name)

1 S. Pinckney, ~~#~~
(Street Address or Route Number)

MADISON 53703
(City & Zip Code)

Independent Business Assn. of WI
(Representing)

Speaking *in favor:* ☒

Speaking *against:* ☐

Registering *in favor:* ☐

Registering *against:* ☐

Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: March 23, 1998

Bill No. AB 929

Or Subject Shareholder liability for wage claims

Charles G. Vogel
(Name)

780 N. Water St
(Street Address or Route Number)

Milwaukee, WI 53202
(City & Zip Code)

Godfrey & Kahn, S.C.
(Representing)

Speaking *in favor:* ☒

Speaking *against:* ☐

Registering *in favor:* ☐

Registering *against:* ☐

Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: March 23, 1998

Bill No. Or Subject: AB 929

Patricia D. Struck
(Name)

P.O. Box 1768
(Street Address or Route Number)

Madison WI 53705
(City & Zip Code)

DFI Division Of Securities
(Representing)

- Speaking *in favor:* ☒
- Speaking *against:* ☐
- Registering *in favor:* ☐
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger promptly.

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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject: AB 929

Peter Ruud
(Name)

18605 Bonnie Lane
(Street Address or Route Number)

Brookfield, Wi. 53045
(City & Zip Code)

Superior Services, Inc.
(Representing)

- Speaking *in favor:* ☒
- Speaking *against:* ☐
- Registering *in favor:* ☐
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger promptly.

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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: March 24, 1998

Bill No. Or Subject: AB 929

Steve Barth
(Name)

777 E. Wisconsin Avenue
(Street Address or Route Number)

Milwaukee WI 53202
(City & Zip Code)

Business Law Section of State
(Representing)

- Speaking *in favor:* ☒
- Speaking *against:* ☐
- Registering *in favor:* ☐
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger prompt

Assembly Sergeant at Arms
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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date:

Bill No. Or Subject: AB929

Andy Cohn
(Name)

114 E CAP
(Street Address or Route Number)

MADISON
(City & Zip Code)

~~AG~~ the Attorney General
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☒
- Registering *in favor:* ☐
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

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Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject: AB 929 Shareholder Liability

Dave Knipfel
(Name)

1111 Jenifer
(Street Address or Route Number)

Madison WI 53703
(City & Zip Code)

SEIU 150
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☒
- Registering *in favor:* ☐
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

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Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

must leave by 3:30P

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject: AB 929

Joanne Ricca
(Name)

6333 W. Bluemound R
(Street Address or Route Number)

Milwaukee, WI 5321
(City & Zip Code)

Wisconsin State AFL-CI
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☒
- Registering *in favor:* ☐
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

Please return this slip to a messenger promp

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-23

Bill No. Or Subject: AB 929

Senator Huelsman
(Name)

(Street Address or Route Number)

(City & Zip Code)

(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☐
- Registering *in favor:* ☒
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject: AB 929

Jenny Boese
(Name)

402 W. Wilson St.
(Street Address or Route Number)

Madison, WI
(City & Zip Code)

Business Law Section of State BAR
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☐
- Registering *in favor:* ☒
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject: AB 929

Pete Christianson
(Name)

1 S. PINCKNEY
(Street Address or Route Number)

MADISON 53703
(City & Zip Code)

Wisconsin Trustees Assn
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☐
- Registering *in favor:* ☒
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/23/98

Bill No. Or Subject: AB 929

MICHAEL R. VAUGHAN
(Name)

P.O. BOX 2038
(Street Address or Route Number)

MADISON, WI 53701
(City & Zip Code)

WISCONSIN INSTITUTE OF CPAS
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☐
- Registering *in favor:* ☒
- Registering *against:* ☐
- Speaking for *information only;* Neither for nor against: ☐

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Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: ~~3~~ 3/23/98

Bill No. Or Subject: [illegible] 929

BRUCE M. DAVEY
(Name)

214 W. MIFFLIN
(Street Address or Route Number)

MADISON 53705
(City & Zip Code)

Self
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☒
- Registering *in favor:* ☐
- Registering *against:* ☒
- Speaking for *information only;* Neither for nor against: ☐

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Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: March 23, 1998

Bill No. AB 929
Or
Subject: Shareholder Liability

Mark Reihl
(Name)

115 W. Main St.
(Street Address or Route Number)

Madison, WI 53703
(City & Zip Code)

Wis. State Council of Carpenters
(Representing)

- Speaking *in favor:* ☐
- Speaking *against:* ☐
- Registering *in favor:* ☐
- Registering *against:* ☒
- Speaking for *information only;* Neither for nor against: ☐

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State Capitol
Madison, WI 53702

Assembly

Record of Committee Proceedings

Committee on Consumer Affairs

Assembly Bill 929

Relating to: liability of shareholders to corporate employes.
By Representative Jensen; cosponsored by Senator Huelsman.

March 18, 1998 Referred to committee on Consumer Affairs.

March 23, 1998 **PUBLIC HEARING HELD**

Present:	(6)	Representatives Otte, Johnsrud, Ott, M. Lehman, Williams and Black.
Absent:	(2)	Representatives Urban and Hasenohrl.

Appearances for
- Robert Garvin, for Rep. Scott Jensen, author
- George Brown, Independent Business Assn. of Wi , Madison
- Charles G. Vogel, Godfrey & Kahn, S.C., Milwaukee
- Patricia D. Struck, Dept. of Financial Institutions, Div. of Securities, Madison
- Peter Ruud, Superior Services, Inc., Brookfield
- Steve Barth, Business Law Section of State Bar, Madison

Appearances against
- Andy Cohn, for the Attorney General, Madison
- Dave Knipfel, SEIU 150, Madison
- Joanne Ricca, Wisconsin State AFL-CIO, Milwaukee

Appearances for Information Only
- None.

Registrations for
- Senator Huelsman, co-author
- Jenny Boese, Business Law Section of State Bar, Madison
- Pete Christianson, Wisconsin Trustees Assn., Madison
- Michael R. Vaughan, Wisconsin Institute of CPAD, Madison

Registrations against
- Bruce M. Davey, self, Madison
- Mark Reihl, Wisconsin State Council of Carpenters, Madison

Assembly

Committee Report

The committee on **Consumer Affairs**, reports and recommends:

Assembly Bill 929

Relating to: liability of shareholders to corporate employes.

By Representative Jensen; cosponsored by Senator Huelsman.

PASSAGE RECOMMENDED, Ayes 5, Noes 3, Absent 0

Ayes: (5) Representatives Otte, Johnsrud, Ott, M. Lehman and Urban.

Noes: (3) Representatives Williams, Hasenohrl and Black.

Absent: (0) None.

Clifford Otte

Representative Clifford Otte
Chair

Vote Record

Assembly Committee on Consumer Affairs

Date: 4-24-98 ☒ Executive Session ☐ Public Hearing

Bill Number: AB 929

Moved by: Johnsrud Seconded by: Urban

Motion: passage

Committee Member	Aye	No	Absent	*Present*	*Absent*
Rep. Clifford Otte, Chair	✓	☐	☐	☐	☐
Rep. DuWayne Johnsrud	✓	☐	☐	☐	☐
Rep. Alvin Ott	✓	☐	☐	☐	☐
Rep. Michael Lehman	✓	☐	☐	☐	☐
Rep. Frank Urban	✓	☐	☐	☐	☐
Rep. Annette Polly Williams	☐	✓	☐	☐	☐
Rep. Donald Hasenohrl	☐	✓	☐	☐	☐
Rep. Spencer Black	☐	✓	☐	☐	☐
Totals:	5	3			

☒ Motion Carried ☐ Motion Failed

RE: AB929

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The board of directors' determination is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the benefits are received or the note is paid. If the services are not performed, the benefits are not received or the note is not paid, the corporation may cancel, in whole or in part, the shares escrowed or restricted and the distributions credited.

History: 1989 a. 303.

180.0622 Liability of shareholders, transferees and others. **(1)** A purchaser from a corporation of the corporation's shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or the consideration specified in the subscription agreement entered into before incorporation.

(2) (a) Except as provided in par. (b) or unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation, except that a shareholder may become personally liable by his or her acts or conduct other than as a shareholder.

(b) The shareholders of every corporation, other than railroad corporations, are personally liable to an amount equal to the par value of shares owned by them respectively, and to the consideration for which their shares without par value was issued, for all debts owing to employes of the corporation for services performed for such corporation, but not exceeding 6 months' service in any one case.

(3) A person who becomes a transferee of shares in good faith and without knowledge that the consideration determined for the shares or specified in the subscription agreement entered into before incorporation has not been paid is not personally liable for any unpaid portion of the consideration.

(4) An executor, administrator, personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable as a holder of or subscriber to shares of a corporation, but the estate and funds in his or her hands are so liable. A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

History: 1989 a. 303.

See note to s. 102.03 citing Miller v. Bristol–Myers, 168 W (2d) 863, 485 NW (2d) 31 (1992).

Personal Liability for Corporate Debt. Kelley. Wis. Law. Oct. 1994.

180.0623 Share dividends. **(1)** In this section, "share dividend" means shares issued proportionally and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series.

(2) Except as provided in sub. (3) and unless the articles of incorporation provide otherwise, a corporation may issue share dividends.

(3) (a) A corporation may not issue shares of one class or series as a share dividend in respect of shares of another class or series unless any of the following is satisfied:

1. The articles of incorporation authorize the issuance.

2. A majority of the votes entitled to be cast by the class or series to be issued approve the issuance.

3. There are no outstanding shares of the class or series to be issued, as determined under par. (b).

(b) If a security is outstanding that is convertible into or carries a right to subscribe for or acquire shares of the class or series to be issued, the holder of the security is considered a holder of the class or series to be issued for purposes of making the determination under par. (a) 3.

(4) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date on which the board of directors authorizes the share dividend.

History: 1989 a. 303.

180.0624 Share rights, options and warrants. Unless the articles of incorporation provide otherwise before the issuance of the rights, options or warrants, a corporation may issue rights, options or warrants for the purchase of shares of the corporation. The rights, options or warrants may contain provisions that adjust the rights, options or warrants in the event of an acquisition of shares or a reorganization, merger, share exchange, sale of assets or other occurrence. Subject to the articles of incorporation, the board of directors shall determine the terms on which the rights, options or warrants are issued, their form and content, and the consideration for which the shares are to be issued. Notwithstanding s. 180.0601 (1) and any other provision of this chapter, and unless otherwise provided in the articles of incorporation before issuance of the rights, options or warrants, a corporation may before, on or after April 30, 1972, issue rights, options or warrants that include conditions that prevent the holder of a specified percentage of the outstanding shares of the corporation, including subsequent transferees of the holder, from exercising those rights, options or warrants.

History: 1989 a. 303.

180.0625 Form and content of certificates. **(1)** At a minimum, a share certificate shall state on its face all of the following:

(a) The name of the issuing corporation and that it is organized under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares and the designation of the series, if any, that the certificate represents.

(2) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the front or back of each certificate shall contain any of the following:

(a) A summary of the designations, relative rights, preferences and limitations applicable to each class, and the variations in rights, preferences and limitations determined for each series and the authority of the board of directors to determine variations for future series.

(b) A conspicuous statement that the corporation will furnish the shareholder the information described in par. (a) on request, in writing and without charge.

(3) (a) Each share certificate shall be signed either manually or in facsimile, by the officer or officers designated in the bylaws or by the board of directors.

(b) The validity of a share certificate is not affected if a person who signed the certificate no longer holds office when the certificate is issued.

History: 1989 a. 303.

180.0626 Shares without certificates. **(1)** Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of any shares of any of its classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on share certificates by s. 180.0625 (1) and (2) and, if applicable, s. 180.0627.

Wisconsin State AFL-CIO

CHARTERED 1958

6333 W. BLUEMOUND RD., MILWAUKEE, WISCONSIN 53213 PHONE (414) 771-0700 FAX (414) 771-1715

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Members of Assembly Consumer Affairs Committee

FROM: Phil Neuenfeldt, Secretary-Treasurer
Joanne Ricca, Staff Representative

DATE: March 23, 1998

RE: **OPPOSITION TO ASSEMBLY BILL 929**
Repeal of Shareholder Liability Law

AB 929 would repeal a vital wage protection statute for workers that was enacted in Wisconsin in 1849 and, unfortunately, is still needed today. Known as the "shareholder liability law" under Section 180.0622 (2)(b), this statute imposes *limited* personal liability on each shareholder of a corporation for up to six months of unpaid wages, but not to exceed the par value of shares owned by each shareholder.

Why is this law needed? It is needed to protect the most vulnerable workers. In most cases they are workers employed at small firms who come to work one day and find the doors locked and the business closed – and they are owed wages for work performed. Since the owner didn't file bankruptcy but just simply closed, there is no recourse under bankruptcy law to claim unpaid wages. Based on testimony submitted by an attorney with the State Department of Justice during the 1995-96 legislative session (when we defeated a previous attempt to repeal shareholder liability), this law has made it possible for the state to collect wages due workers in several cases of labor standards violations. It is often the *only* viable option available to workers to obtain their unpaid wages. Though the statute refers to liability for "up to six months of unpaid wages", the reality is that workers can't survive without a paycheck for six months. Usually the unpaid wages are for a payroll period or a few weeks.

The argument usually given for repeal of the law is that it hurts Wisconsin's "business climate." Do we really want to encourage businesses to move to our state if they plan to leave workers unpaid? The vast majority of Wisconsin employers are not affected by this law. Most employers do not leave workers unpaid for work performed. However, the law has been of tremendous help in actions against some smaller firms with unscrupulous shareholders who intentionally fail to pay wages in order to divert corporate monies to themselves or to start a new business. They believe they can hide behind the corporation and avoid paying their workers for labor performed in good faith.

The basic principle in our current law is that shareholders invest in a firm knowing that they are taking a risk: they make a voluntary, informed judgment about the degree of that risk and may profit handsomely–or lose their investment–something clearly understood by any investor. Workers, on the other hand, simply sell their labor. If the firm prospers, workers understand that they still get only their agreed-upon wages; but if the firms closes, that should not absolve the owners of paying their workers for work performed. AB 929 could more accurately be called the "repeal of shareholder responsibility" bill.

Current statistics indicate that business is doing well in our state, proving that this shareholder liability statute does not deter business creation or viability. **We hope that no fair-minded legislator of either party would accept, let alone promote, the loss of wage protection for workers as necessary for economic development or a "good business climate". We urge members of the committee to soundly reject AB 929.**

PN/JR/mj

Andy Cohn

DEPARTMENT OF JUSTICE TESTIMONY
1997 ASSEMBLY BILL 929
MONDAY, MARCH 23, 1998
ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS

Assembly Bill 929 seeks to repeal current law that attaches limited personal liability on each shareholder of a corporation. Currently, a shareholder can be held liable for up to six months' wages for employees, not to exceed the par value of shares owned by that shareholder.

The Department of Justice prosecutes violations of labor standards regulations that are referred to us by the Department of Workforce Development, many of which contain a wage component. More than half of these referrals are against corporations. In fact, most of the named corporations we sue are small – having only one or two shareholders. These companies often do not follow the corporate requirements outlined in the statutes.

The department has seen several cases where the single shareholder has closed one corporation while owing unpaid wages to employees, yet established another corporation at roughly the same time. Clearly there was money to pay the employees, but the shareholder decided to close the business and withhold the wages. The money went to starting up a new corporation.

In several of these types of cases, attorneys for the corporation have argued that since the corporation is no longer in business; since there is no shareholder liability; and since there are no corporate assets, the matter is closed and should be dismissed. When our attorneys point out section 180.0622 of the state statutes, shareholders suddenly become very interested in resolving the matter and finding money to pay some or all of the wages involved.

This provision doesn't affect most corporate shareholders because the companies pay their employees. But it does protect employees from the unscrupulous shareholders who believe they can hide behind the corporation and fail to pay all employee wages. This statute is very important in starting up a dialogue regarding unpaid wages. It has been our experience that when we sue a corporation that has closed its doors and we do not name a shareholder in the lawsuit, we get a default judgment against the corporation. This typically occurs because the corporation fails to respond to our complaint. However, when we name an individual shareholder and the corporation, we nearly always get a response.

I should also point out that employees often cannot pursue their claims in a bankruptcy proceeding filed by the corporation where wage claims are typically given priority. Many of the corporations we prosecute do not go through bankruptcy or any other dissolution proceedings. They simply close their doors and the shareholders go on to start another corporation.

Let me give you one more example:

A Milwaukee day care center closed its doors owing at least five employees their wages. The sole shareholder indicated that there were no corporate assets with which to pay them. However, during discovery in the case, we discovered that the sole shareholder had started another corporation shortly before closing his day care center. Money to pay the employees was diverted to another corporation. Upon mentioning that he was liable for the wages, he indicated a willingness to resolve the case by coming up with the back pay.

In summary, the current law on limited shareholder liability is very narrow in scope, but is a very effective instrument in going after shareholders who intentionally fail to pay their corporate employees the wages they deserve. I ask you to vote against AB 929 and preserve the protection that current law gives working people in Wisconsin.

This export is no bull

Γhe nation's monthly trade ɔ was $10.8 billion in De- nber, but don't blame it on ll semen.

ndeed, if it weren't for bull nen, the trade deficit would ve been worse. It seems, cording to **USDA Agricultur- Research Service**, the Unit- States is the world's leading porter of dairy bull semen — ɔre than $60 million a year.

In an ongoing effort to main- n our pre-eminent position, S scientists evaluate 128,000 S. bulls each year and rank em based on data from 20 llion of their female off- ring.

The results and — as humor iter Dave Berry would say I am not making this up, are warded to **INTERBULL**, the ernational Bull Evaluation rvice.

'American bull semen con- ually ranks high on INTER- LL evaluations, reflecting United States' ability to stay competitive in breeding mar- kets internationally," accord- ing to the ARS.

Or put another way. U.S. dairy bull semen rules!

Coke: It's not just or breakfast anymore

Γalk about setting lofty ɩls: **Coca-Cola Co.** last week d that, at some point this nth, it would reach the lestone of selling 1 billion vings of its products every v. But that's not even close good enough for Atlanta- sed Coke. After all, as the npany's annual report nts out, the world still con- nes 47 billion servings of ier beverages each day. ne billion down, 47 billion go," the report says. Among ke's targets:

Water: "In many places, still easier to find a water ntain (er, Bubbler), than a ca-Cola," according to the ıual report.

Wine: "Wine is so close- ıssociated with meals that a part of every formal ce setting and every crys- pattern. . . . We're out to ınge that by making Coca- la the preferred drink."

Coffee: "Stepping down hall for a coffee break has ome an office tradition und the world. We're in- tly focused on making e that, any time people need to be refreshed, they take a 'Coca-Cola break.'"

THE BUBBLER

The talk of Wisconsin Businesses

They're wired in Pewaukee

Quad/Graphics Inc. and the **Waukesha County Technical College** helped make Pewaukee the "most wired" small town in Wisconsin, according to the America's 100 Most Wired Cities and Towns Web site.

Town of Pewaukee Administrator **Harlan Clinkenbeard** said he hadn't heard about the designation but was not surprised by the results. "We've got four square miles of industrial development in this town," Clinkenbeard said. "I can list dozens and dozens of data processing people in this town."

In a ranking of the nation's most-wired major cities, Milwaukee landed at 32 out of 50.

An expert at getting the last drop

The bartender was sure he was the strongest man anywhere, so he squeezed a lemon into a glass, then offered $1,000 to anyone who could squeeze just one more drop.

One day, a scrawny little man came into the bar, wearing thick glasses and a polyester suit. In a squeaky voice, he said: "I'd like to try the bet!"

After the laughter died down, the bartender agreed. The bartender grabbed a lemon and squeezed away until only the wrinkled remains were left. He handed it to the small man.

The crowd watched in amazement as the little man squeezed and six drops fell into the glass.

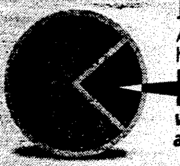
As the crowd cheered, the bartender paid the $1,000 and asked the little man, "What do you do for a living? Are you a lumberjack? A weight-lifter?"

The man replied: "I work for the IRS."

Contributing to The Bubbler this week were Neil Rosenberg, Karen Samelson and Amy Althoff. What do you hear? Tell The Bubbler by e-mail: monbiz@jsonline.com; fax: 223-5528; phone: 224-BUBL; or snail mail: "The Bubbler," P.O. Box 371, Milwaukee, WI 53201.

By the numbers...

Liar, liar



Analyzing 20,000 pre-employment honesty tests, researchers found:

23.3%

were considered "high risk" job applicants based on their honesty tests.

Among the admissions:

38.1% could be tempted to steal from their employer.

28.7% would possibly use marijuana/illegal drugs in the future.

24.0% had frequently associated with fellow employees who admitted they were stealing merchandise from the company.

23.8% had stolen money within the past three years.

Source: CHC Forecast Inc.

Madison firm slow to make initial public offering

Biotechnology firm's deal with underwriter has some unusual provisions

BY KATHLEEN GALLAGHER
of the Journal Sentinel staff

Ophidian Pharmaceuticals Inc. filed for permission from securities regulators to have an initial public offering in August, but the firm still hasn't gone public.

Some wonder if it ever will.

The Madison-based biotechnology company's proposed IPO has been on the drawing board for seven months.

Since late summer, Ophidian and its underwriter — Seattle-based National Securities Corp. — have made seven amendments to its filing, the last on Feb. 20. The average IPO is completed within six weeks of filing with regulators, one securities industry professional said.

"Anything more than two months means it's in big trouble," he said.

Ophidian's top executive doesn't see it that way.

"The company is still, in effect, in registration. From the company's perspective, the offering was postponed," said Douglas C. Stafford, Ophidian's president and chief executive officer.

Ophidian is proposing a $15.3 million offering of 2.5 million units — each of which represents one share of common stock and one common stock purchase warrant — at $6.10 a unit, according to documents Ophidian filed with the Securities and Exchange Commission. The shares and warrants would trade separately 90 days after the IPO.

Ophidian researches and develops pharmaceuticals, with an emphasis on products for infectious diseases. The company has 33 full-time employees, 11 of whom have doctorates.

The company is losing money, derives no sales from its products and has certain arrangements with its underwriters that potential investors might have a hard time swallowing.

Investment bankers haven't been able to bring as many companies public this year as last year. As of Friday, there were 76 IPOs, compared with 107 through March 6, 1997, according to Securities Data Co. in Newark, N.J.

Biotechnology companies have been conspicuously absent. Just two have gone public this year, compared with 11 during the same period last year.

"With the large number of new issues we've seen over the past few years, the market's ability to continue to absorb new deals may be getting strained," said Richard P. Imperiale, president of Uniplan Inc. in Milwaukee.

He thinks the quality of IPOs in general has declined. "The companies they're bringing to market are not as good as the ones we were seeing two or three years ago," he said.

But there are some indications things could get better. "Technology deals have shown signs of life after the winter of despair," said Richard J. Peterson, spokesman for Securities Data.

Still, he says the market has been very selective, favoring companies with a good track record, revenue and market penetration. Ophidian is not strong in any of those categories.

Ophidian had revenue of $671,881 and a net loss of $2.5 million for the fiscal year ended Sept. 30, 1997. Its last profitable year was 1993, when it had revenue of $1.7 million and net earnings of 606,463.

The company had an accumulated deficit of $8.2 million as of Dec. 31, 1997, and a net loss of $861,169 for the three months ended Dec. 31, 1997.

As for market penetration, Ophidian has had no revenue from pharmaceutical product sales. It has generated revenue primarily from contract fees and research grants.

Ophidian has agreed to compensate National Securities with what many observers view an unusual variety of payments, in addition to the standard fees.

For example, it will pay National Securities an allowance equal to 2.5% of the offering's gross proceeds, according to the

Please see **BIOTECH** *page 4*

Biotech/ Madison firm slow to go public

From page 3

documents. The underwriter is not obligated to say what the fee is for, or how it will use it.

National Securities also would have the right to buy 250,000 warrants for a fraction of a penny each that are initially exercisable at a price of 130% of the IPO price starting a year after the offering. The majority of deals that come to market do not have such an option.

Ophidian previously raised $12.8 million by issuing 7.3 million shares through three private placements and transactions with big investors, according to the documents. Pharmaceutical giant Eli Lilly owns 9.6% of Ophidian's outstanding shares.

If Ophidian's proposed IPO occurred, the company's current investors would have an immediate increase in book value per share of $1.24, according to the documents. Investors who bought at the offering would have an immediate decrease in book value per share of $4.41, or about 72% of the price they paid, assuming the offering happened at $6.10 a share.

Shareholders also would be liable for six months worth of the company's payroll obligations, in an amount up to the purchase price they paid for each share, according to the documents.

Historic Third Ward to offer more condos

Demand prompts decision to convert Broadway Apartments

By TOM DAYKIN
of the Journal Sentinel staff

The 105-unit Broadway Apartments in the Historic Third Ward will be converted into condominiums under a proposal unveiled by the apartment building's owners.

Great American Insurance Co., Cincinnati, plans to sell the one- and two-bedroom units for $60,000 to $140,000, said Andrew Martin and Thomas Schemberger, both of Ogden & Co. Martin and Schemberger are the listing brokers for the Broadway, 220-246 N. Broadway.

Schemberger said the condo conversion would take advantage of heavy demand for condominiums in and around downtown. The market includes downtown employees and "empty nesters," couples whose children have moved out and who now want to be near downtown's attractions and nightlife.

"The market for condominiums in Milwaukee is very hot, particularly in the downtown market, and especially in the Third Ward," Schemberger said.

Martin said he and Peter Ogden, Ogden & Co. principal, originally approached the Broadway's manager, Miami-based Brothers Property Management, last spring with the idea of buying the Broadway and converting it to condos.

Martin said he and Ogden — along with an unnamed investor — were inspired by the market response to Riverwalk Plaza, another Third Ward condo development.

Firstar Community Investment Corp. and the Wisconsin Preservation Fund unveiled plans in May for Riverwalk Plaza, which will create 79 condos in two former industrial buildings at 141 and 201 N. Water St. The units, starting at $65,000, have been selling rapidly.

"We said, 'Hey, maybe the condo market in the Third Ward has finally come around,'" Martin said.

The Ogden group was unable to reach an agreement on a sale price with the Broadway's owner. However, Ogden & Co. was later contacted about listing the units for a conversion.

Broadway residents — who have first dibs on buying the units — were informed of the conversion plans on Friday.

Martin said 103 of the six-story Broadway's 105 units will be offered for sale. Two units are being set aside as a sales office, and might later be sold as a commercial condo.

The units include appliances, with washing and drying machines. The larger units have dens, and some units include exposed brick and arched windows. The building includes an exercise room and sauna, clubhouse, underground parking and an interior courtyard.

Schemberger and Martin hope to have 35% of the units sold by June.

The Broadway consists of four connected buildings that were built from 1893 to 1913. Formerly an industrial property, it was converted to apartments in 1988 by an affiliate of Historic Landmarks for Living, a Philadelphia development firm.

Historic Landmarks spent $10 million on the project — and in 1994 lost the building through foreclosure to Great American Insurance Co. It paid $3 million for the Broadway, which was among the first major projects in the Third Ward's conversion from an industrial area to offices, housing and retail.

Best [illegible] Books [illegible]

1	"True Professionalism"	David H. Maister
2	"The Leadership Engine"	Noel D. Tichy & Eli Cohen
3	"From Mind to Market"	Roger D. Blackwell
4	"SPIN Selling"	Neil Rackham
5	"Customer Centered Growth"	Richard Whiteley & Diane Hessan
6	"Managing the Professional Service Firm"	David H. Maister
7	"Best Practices"	Robert Hiebeler, Thomas B. Kelly & Charles Ketteman
8	"The Profit Zone"	Adrian J. Slywotzky & David J. Morrison
9	"The Leaders Handbook"	Peter R. Scholtes
10	"Light Bulbs for Leaders"	Barbara Glacel & Emile Robert Jr.
11	"SPIN Selling Fieldbook"	Neil Rackham
12	"Opening Digital Markets" (second edition)	Walid Mougayar
13	"Everyday Revolutionaries"	Sally Helgesen
14	"The 500 Year Delta"	Jim Taylor & Watts Wacker
15	"The 7 Habits of Highly Effective People"	Steven R. Covey
16	"The New Strategic Selling"	Stephen E. Heiman
17	"Predatory Marketing"	C. Britt Beemer With Robert L. Shook
28	"The Complete MBA Companion"	Wharton Business School Staff
19	"Champions of Change"	David A. Nadler
20	"The World According to Peter Drucker"	Jack Beatty
21	"Trust in the Balance"	Robert Bruce Shaw
22	"Managers as Facilitators"	Richard G. Weaver & John D. Farrell
23	"Customer Driven Company"	Richard Whiteley & Diane Hessan
24	"The Loyalty Effect"	Frederick F. Reichheld
25	"1001 Ways to Reward Employees"	Bob Nelson

Source: 800-CEO-READ, a division of Schwartz Business Books, based on sales to its more than 10,000 corporate, educational and organizational customers across the country.

Journal Sentinel

REASONS TO REPEAL WISCONSIN'S ANTIQUATED SHAREHOLDER 'DOUBLE-INDEMNITY' WAGE CLAIM STATUTE*

<u>January 31, 1998</u>

- Wisconsin's "double-indemnity" wage claim statute makes investors in Wisconsin companies risk losing at least double the amount of their original investment to pay unpaid workers

- With only one very limited exception, Wisconsin is the *only state* that makes shareholders personally pay for unpaid employee wages

  - This antiquated 1849 statute makes Wisconsin the laughing stock of the capital raising community

- This "double-indemnity" risk results in the loss of good paying jobs by preventing Wisconsin companies, particularly new or small businesses, from raising money to start and grow their businesses

  - money that <u>is</u> raised is raised at a higher cost

  - businesses are relocating out of Wisconsin to avoid this added risk

  - Wisconsin-based corporations are incorporating in other states to try to avoid this added risk

- The double-indemnity statute encourages entrepreneurs to finance their companies with debt instead of equity

- Unionized workers don't need the double-indemnity statute (federal law applicable to collective bargaining agreements preempts Wisconsin's law)

- Repeal of the double-indemnity statute *won't hurt workers* (the double indemnity statute has only been used a handful of times to pay workers unpaid wages)

  - However, despite its limited actual use, its mere existence has caused a flight of businesses out of Wisconsin and raises the cost of those doing business here.

Help allow Wisconsin businesses to grow by repealing the double-indemnity wage claim statute

* *Sponsored by the Business Law Section of the Wisconsin State Bar.*

Commentary in Support of the Repeal of Wisconsin's Antiquated 'Double-Indemnity' Wage Claim Statute

By the Business Law Section of the Wisconsin State Bar

January 31, 1998

Section 180.0622(2)(b) of the Wisconsin Business Corporation Law states that a shareholder may be made personally liable, above and beyond the amount the shareholder originally invested, for an amount of up to six months of wage claims which are unpaid by the corporation in which the shareholder invested.

Wisconsin courts have interpreted this 1849 statute to impose personal liability on shareholders for the amount of an initial shareholder's original investment amount, meaning that a shareholder in a Wisconsin corporation risks losing at least double his investment.

Wisconsin courts have also said that this "double-indemnity" statute not only applies to the shareholders of corporations incorporated in our state, but also to the shareholders of corporations merely doing business in Wisconsin.

No other state has a similar statute (except to a very limited extent in New York).

The Business Law Section of the State Bar believes Wisconsin's antiquated unique double-indemnity wage claim statute must be repealed for the following reasons:

- The double-indemnity statute makes shareholders of Wisconsin corporations risk losing *at least* double the money that was originally invested in a corporation.
  - If a second shareholder buys stock from an original shareholder at one-half of the price paid by the first shareholder, then the second shareholder risks losing twice the amount the first shareholder invested and four times what the second shareholder paid.
- This added risk to investors has resulted in:
  - businesses leaving Wisconsin
  - Wisconsin-based businesses being incorporated in other states (unbeknownst to many, courts have said that this won't work in shielding shareholders from double-indemnity... leaving a trap for the unwary)
  - increased costs to Wisconsin business trying to raise money to grow and add jobs
- In the mid-1800s, this type of statute was more common – now only Wisconsin has this broad of a statute (New York's statute is much more limited).

- Wisconsin's double-indemnity statute does little to really "protect" unpaid workers
    - Federal law preempts the double-indemnity statute and protects unionized employees under collective bargaining agreements
    - Federal statutes protect and provide for minimum wages, a safe workplace, a non-discriminatory environment, compensation for work-related injuries, unemployment benefits and protection of retirement income
    - Bankruptcy law gives employee wage claims priority in collection over other claims
- A basic principle of the corporate form is that no shareholder in a corporation risks losing more than the amount of his investment
    - The double-indemnity statute defeats this basic fundamental principle which was and is one of the foundations of spuring economic growth in our country
    - This added risk encourages Wisconsin entrepreneurs to form limited liability companies or limited partnerships which do not impose similar double-indemnity
- The double-indemnity statute encourages entrepreneurs to fund corporate growth with *debt* instead of *equity*
    - Increases the risk of business failure and loss of jobs
    - Increases the cost of capital to Wisconsin corporations
- The fear of double-indemnity most inhibits investment when it would be most beneficial to employees: that is, when a business is in trouble and needs an infusion of equity capital
- The double-indemnity statute purports to apply to all stockholders of Wisconsin corporations, but in fact the double-indemnity burden will always fall almost entirely on the stockholders who live in Wisconsin

For these reasons, we urge your support to repeal Wisconsin's double-indemnity wage claim statute.

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Testimony to

STATE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS

Patricia D. Struck, Administrator

Division of Securities

Wisconsin Department of Financial Institutions

March 23, 1998

Chairman Otte, members of the Assembly Committee on Consumer Affairs, thank you for allowing me to testify in favor of Assembly Bill 929 today.

My name is Patricia Struck. I am the Administrator of DFI's Division of Securities. My responsibility in that position is simple: the protection of Wisconsin's investors.

It is for the protection of Wisconsin's investors that I urge you to repeal Section 180.0622(2)(b) of the Wisconsin statutes which makes stockholders liable for unpaid employee wage claims.

There is one thing all stock investors know when they buy stock: they stand to lose their whole investment. Stock is not backed by specific collateral. Stock ranks last in the priority of claims if the corporation goes through bankruptcy.

Do they also know that they bear the risk of liability for unpaid wages? NO!

Only in Wisconsin does a shareholder assume this added risk. The risk is unknown to most investors.

Who are Wisconsin's investors?

When I began as a securities regulator almost 16 years ago, investors were an elite group.

Today, almost everyone is an investor.

Growing numbers of us are investing directly in the stock market, as well as through stock mutual funds, as a way of saving for our children's college tuition and for our own retirement.

Investors include Wisconsin's workforce at all levels—union workers and management employees alike--who invest in the stock of their employers, through 401(k) plans and other pension and profit sharing plans. Investors include civil servants, judges, professors and hospital workers who invest in stock through the mutual funds offered in the state Deferred Compensation Plan. Investors include direct buyers of mutual funds, as well as buyers who invest through variable annuities and whole life insurance policies.

Investors deserve protection against the hidden risk of liability for employee wage claims.

Please repeal this antiquated threat to Wisconsin's investors.

STATEMENT IN SUPPORT OF ASSEMBLY BILL 929

March 23, 1998

This statement is offered personally and on behalf of my law firm, Godfrey & Kahn, S.C.

I have practiced business law in Wisconsin for almost 25 years. Godfrey & Kahn is the 5th largest law firm in Wisconsin. We have offices in Milwaukee, Green Bay, Appleton, Oshkosh and Madison. We concentrate on representing mid-sized and smaller businesses and entrepreneurs, although we count a number of Wisconsin-based public companies among our significant clients.

Based on our experience in working with businesses throughout Wisconsin, we strongly advocate passage of Assembly Bill 929 and repeal of Section 180.0622(2)(b) of the Wisconsin Statutes.

Many reasons can be cited to support repeal of this punitive statute. We want to focus on one reason in particular: the statute is counterproductive; it hurts rather than helps Wisconsin workers.

Here's why:

- The statute discourages larger equity investment in corporations, thus putting the corporations and therefore workers' jobs in greater jeopardy. To the extent shareholders invest more in the stock of a corporation (as opposed to loaning money to the corporation or personally guaranteeing bank loans to the corporation), the corporation has more funds with which to operate its business and pay its workers and other creditors. Moreover, loans must be repaid; money received in payment for common stock does not. Hence, from the perspective of an employee, his or her employer (and therefore, his or her job) is more secure if the employing corporation has more equity capital and less debt. Ironically, however, the effect of Section 180.622(2)(b) is that the more shareholders invest in the stock of a corporation, the more they are at risk. This is because the measure of liability under the statute is the issue price for a shareholder's stock. The higher the initial price for the stock, the more the potential liability of the shareholder.

  Our experience is that entrepreneurs take this risk into account when they structure the finances of their business. They favor debt over equity.

- The statute discourages business formation and expansion in Wisconsin. When we counsel prospective investors and entrepreneurs, they are both amazed and discouraged by what we have to tell them about this statute. Some of these people view the statute as a minor irritant. Others, however, take it more seriously and make it a major consideration in evaluating Wisconsin's business climate. To the extent the statute discourages these investors and entrepreneurs from providing the capital for creating the enterprises that will employ Wisconsin workers, the statute hurts Wisconsin workers.

- The foregoing harm to Wisconsin workers is not, in our experience, matched by a corresponding benefit to Wisconsin workers. The statute is much discussed but seldom applied. It very infrequently results in payments to workers, and then typically only in relatively modest amounts to each worker. At the same time, however, the statute is taken into account each time an investor or entrepreneur evaluates whether to invest in a Wisconsin business or to establish a Wisconsin business.

- The statute is arbitrary and irrational in that its purported protection of workers does not apply to all limited liability entities in Wisconsin. Only shareholders of corporations are affected. Members of limited liability companies and partners in limited liability partnerships are not. If the statute were really useful rather than the historical anachronism that it is, we assume the legislature would have seen fit to include such protection in the limited liability company and limited liability partnership statutes. The legislature did not.

The common interest of Wisconsin workers and shareholders is to promote the vitality of Wisconsin business so that such businesses can prosper and continue to employ and fairly compensate such workers. Section 180.0622(2)(b) hurts rather than promotes such prosperity by distorting business investment decisions. You do no favor to Wisconsin workers by opposing repeal of the statute.

Charles G. Vogel
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Milwaukee, WI 53202

MW2-126949-1

Vrakas/Blum

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March 23, 1998

Chairman Otte
Vice-Chairman Johnsrud
Representative Ott
Representative Lehman
Representative Urban
Representative Williams
Representative Hasenohrl
Representative Black

As members of the Assembly Committee on Consumer Affairs I encourage you to support and vote in favor of Assembly Bill 929.

Passage of AB 929 would repeal Section 180.0622(2)(b) of the Wisconsin Statutes which imposes personal liability on shareholders for up to twice the original purchase price of their shares for unpaid employee wage claims.

In the mid-1800's, this type of statute was more common, now only Wisconsin has this broad of a statute.

As a shareholder in Vrakas/Blum, a CPA and Business Advisory firm, Vice President - State Programs for the Independent Business Association of Wisconsin (IBAW) and immediate Past - President of the Wisconsin Institute of CPAs Southeast Chapter, I encourage you to pass this bill out of committee.

Sincerely,

Karin M. Gale

Karin M. Gale, CPA

Repealing Wisconsin's Wage Claim Statute
under Ch.180.0622(2)(b), Stats.

What is the "Double-Indemnity" Wage Claim under Section 180.0622(2)(b)?

Section 180.0622(2)(b) of the Wisconsin Business Corporation Law states that a shareholder may be made personally liable, above and beyond the amount the shareholder originally invested, for an amount of up to six months of wage claims which are unpaid by the corporation in which the shareholder invested.

Wisconsin courts have interpreted this 1849 statute to impose personal liability on shareholders for the amount of an initial shareholder's original investment amount, meaning that a shareholder in a Wisconsin corporation risks losing at least double his or her investment.

Wisconsin courts have also said that "double-indemnity" statute not only applies to the shareholders of corporations incorporated in our state, but also to the shareholders of corporations merely doing business in Wisconsin.

No other state has a similar statute (except to a very limited extent in New York.) The Business Law Section of the State Bar of Wisconsin believes the double-indemnity wage claim statute must be repealed for these following reasons.

1. The double-indemnity statute makes shareholders of Wisconsin corporations risk losing at least *double* the money originally invested.

   ex: if a second shareholder buys stock from an original shareholder at one-half of the price paid by the first shareholder, then the second shareholder risks losing twice the amount the first shareholder invested and *four* times what the second shareholder paid.

2. The added risk to investors has resulted in business leaving Wisconsin; Wisconsin-based businesses being incorporated in other states (even though the courts have said this still does not shield shareholders...leaving a trap for the unwary.); and increased costs to Wisconsin business trying to raise money to grow and add jobs.

3. In the mid-1800s, this type of statute was more common - Wisconsin remains the only state left in the nation (besides to a very limited extent New York) to retain this antiquated approach.

4. Wisconsin's double-indemnity statute does little to really "protect" unpaid workers as was its original intent when instituted in 1849. Federal law preempts the double-indemnity statute and protects unionized employees under collective bargaining agreements (which puts non-unionized employees at a disadvantage). Federal law provides for minimum wages, a safe workplace, compensation for work-related injuries, unemployment benefits and protection of retirement income among others.

5. A basic principle of the corporate form (business structure) is that no shareholder is put at more risk than his/her investment. The double-indemnity statute works at direct

Maintaining the wage claim statute increases the risk of business failure and the loss of jobs while simultaneously putting Wisconsin's businesses and stockholders at a competitive disadvantage to other states.

It should be repealed.

counter-purposes to this fundamental principle and encourages Wisconsin entrepreneurs to form limited liability companies or limited partnerships which do not impose similar double-indemnity restrictions.

6. The double-indemnity statute encourages entrepreneurs to fund corporate growth with debt instead of equity. This, unfortunately, increases the risk of business failure and the loss of jobs. It also increases the cost of capital to Wisconsin corporations. The fear of double-indemnity inhibits investments when most needed and, although the statute is said to apply to all stockholders of corporations, the burden will rest on Wisconsin stockholders almost entirely.

In sum, the double-indemnity statute inhibits investment when it is most needed and most beneficial for employees — when a business is in trouble and needs an infusion of equity capital. The statute puts Wisconsin corporations at a competitive disadvantage to other business entities within and outside of the state while providing no real benefit to the employees it purports to "protect."

The statute is a product of a time and business climate which no longer exists and should be repealed.

State Bar's
Business Law Section

The State Bar's Business Law Section has over 1,700 members. They are attorneys who practice business law - for both for-profit and non-profit corporations - and support the repeal of the double-indemnity wage claim statute.

For more information contact:

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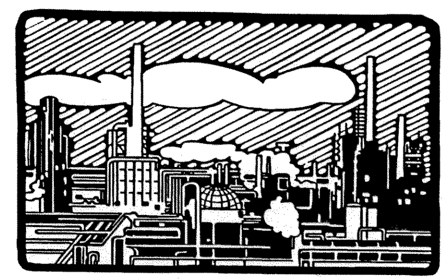
Business Law Section
414-297-5662

Patricia Struck
Business Law Section
608-266-3432

Jenny Boese
State Bar of Wisconsin
402 W. Wilson Street
(608) 250-6045

Reasons to Repeal Wisconsin's Shareholder "Double-Indemnity" Wage Claim Statute



Business Law Section
State Bar of Wisconsin

STATE BAR
OF WISCONSIN
402 W. Wilson Street
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Members of the Assembly Consumer Affairs Committee

From: *Business Law Section* of the State Bar of Wisconsin

Date: March 23, 1998

Re: Assembly Bill 929

The Business Law Section of the State Bar of Wisconsin supports the repeal of the "double-indemnity" wage claim statute under Assembly Bill 929. It is a statute which no longer provides its intended benefit, is superseded by federal law, is inequitable in terms of its application to employees, inhibits business growth in Wisconsin, and puts an unfair burden on the investor with the least amount of control or power. Wisconsin is the last state in the nation to retain this vestige of the 1800s. Its time has come and passed. It should be repealed.

What is the "Double-Indemnity" Wage Claim Statute?
Enacted in 1849, the "double-indemnity" wage claim statute is the product of a business environment which no longer exists today. It imposes personal liability on a shareholder of a corporation for any amount owed by the corporation to its employees for up to 6 months of work per employee. Court cases have interpreted this statute to require personal liability for up to **double** the amount originally invested in the corporation.

Why Should the "Double-Indemnity" Statute be Repealed?
First, the "double-indemnity" statute places Wisconsin shareholders at risk for a disproportionate amount of their original investment. One of the fundamental business principals of a corporation is that a shareholder is put at risk for no more than his/her original investment. This statute works at direct counter-purposes to that tenet. In addition, Wisconsin shareholders will bear all the financial burden as out-of-state shareholders are not subject to service of process and therefore cannot be brought to account here in Wisconsin for their liability (even though the statute claims to apply to all shareholders).

Second, the added risk of liability decreases the incentive for business to come to and/or stay in Wisconsin. This happens for many reasons. Wisconsin courts have interpreted this statute to apply not only to Wisconsin shareholders, but also to shareholders of corporations merely doing business in the state.

Wisconsin is the only state to retain this type of statute, (except for a very limited extent in New York) placing it at a significant disadvantage to other states in attracting these businesses. Corporations looking to locate in Wisconsin think twice when realizing they are putting their investors at double the risk of their investment by doing business or relocating to the state.

Third, it encourages entrepreneurs to fund corporate growth with debt instead of equity. When a corporation cannot attract the types of passive investors mentioned above, business must look to other methods to fund corporate growth. The result is to fund with debt rather than equity. This increases the risk of business failure, loss of jobs and the cost of capital, none of which are of any benefit to either the business or its employees.

Does the Statute Truly Provide Protection to Unpaid Workers?

For several reasons the answer is no. In 1988, a federal court ruled that federal law preempts the "double-indemnity" statute when the employee is subject to a collective bargaining agreement. In the cases where federal law doesn't negate the statute entirely, it puts the interests of the non-unionized employee at a disadvantage to those of unionized employees. The disparity between treatment of these types of employees is reason in and of itself to eliminate the statute.

Since 1849 when this statute was enacted, federal law has sought to address the inadequacies in bargaining power between management and labor. They have enacted minimum wages laws, laws on safe workplaces, workers compensation laws, unemployment compensation laws and laws protecting retirement incomes. In addition, bankruptcy laws provide for employee wage claims to have priority in collection over other claims. All of these protections work to the direct benefit of the employees.

Maintaining the "Double-Indemnity" wage claim statute does not provide the protection it purports to provide. It places the interests of one class of employees over the interests of another, puts Wisconsin shareholders substantially at a greater risk than out-of-state shareholders, and causes businesses to think twice before investing here. No other state in the nation has found reason to retain this archaic provision. Wisconsin would be wise to finally follow suit and repeal it.

The Business Law Section urges your support of AB 929.

For additional information, please contact Jenny Boese at the State Bar at 608-250-6045.