

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Insurance
(AC-In)

(Form Updated: 11/20/2008)

COMMITTEE NOTICES ...

➤ Committee Reports ... CR
**

➤ Executive Sessions ... ES
**

➤ Public Hearings ... PH
**

➤ Record of Comm. Proceedings ... RCP
**

**INFORMATION COLLECTED BY COMMITTEE
FOR AND AGAINST PROPOSAL ...**

➤ Appointments ... Appt
**

Name:

➤ Clearinghouse Rules ... CRule
**

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

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➤ Miscellaneous ... Misc
**

AB 222 ??

FAIR CLAIMS ACT
Assembly Insurance Committee
April 21 Hearing

Testimony lineup of Fair Claims Act PROPONENTS:

✓ Rep. Kaufert – Sen. Cowles, co-authors

✓ Jim Kelley, Executive VP & General Counsel for Georgia-Pacific

✓ Paul Kent, Environmental Attorney, Anderson & Kent Law Firm *38 slip*

✓ Chris Hermann, Environmental Expert, Stoel Rives Law Firm

✓ Dennis Delie & Gary DeKeyser, United Steelworkers of America

✓ Tim Hanna, Mayor of Appleton *No slip*

✓ Rick Delacenserie, Davids & Kuelthau Law Firm

✓ Ron Van Den Heuval, Fox Valley business owner

✓ Ed Wilusz, Wisconsin Paper Council

✓ Al Toma, Northern District Government Affairs, Georgia-Pacific

*Terrance McGowan - Operating Engineer
Local 139*

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to
file*

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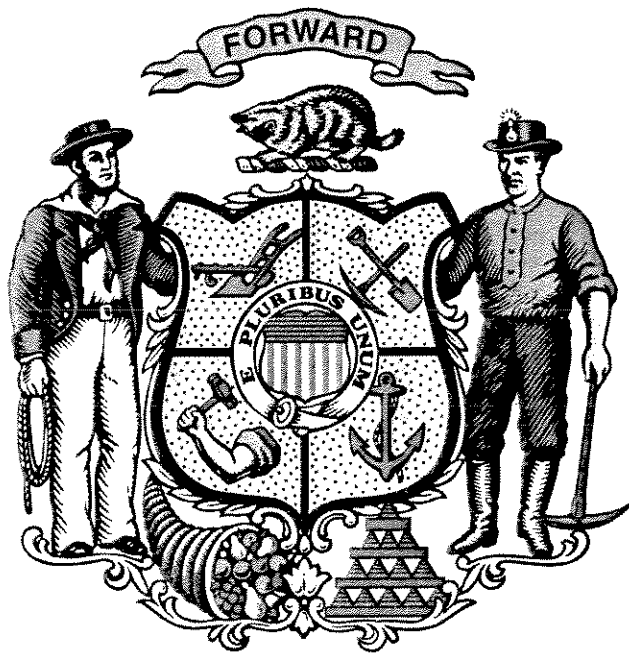
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✓ Terrance McGrowan – Operating Engineers Local 139
~~Gary DeKeyser~~

*call
Peter
Larson
next*



ASSEMBLY BILL 222
Assembly Insurance Committee Hearing
April 21, 2005

Witness List

1. **Eric Englund** – Wisconsin Insurance Alliance (Introduction)
2. **Michael Cohen** – Attorney, Meissner Tierney Fisher & Nichols, S.C.
(Review of Legislation and Insurance Coverage)
3. **Laura Foggan** – Attorney, Wiley Rein & Fielding, LLP
(Review of Legislation and Insurance Coverage)
4. **David Dybdahl**, CPCU, ARM, MBA – Commercial Insurance Broker,
American Risk Management Resources (Future Implications)
5. **Gordon Baldwin** – Evjue-Bascom Emeritus Professor of Law, University
of Wisconsin-Madison (Constitutional Issues)
6. Wisconsin Domestic Insurance Panel 1: **Don Haldeman** – CEO, Rural
Mutual Insurance Co. (Madison); **Terry Wendorf** – CEO, Wisconsin
Reinsurance Corp. (Madison); **Gerald Mueller** – President, Wisconsin
Association of Mutual Insurance Companies
(Statewide Implications for Industry)
7. Wisconsin Domestic Insurance Panel 2: **Bill Thielmann**, General
Casualty Insurance Companies (Sun Prairie); **Jim Pauly**, West Bend
Mutual Insurance (West Bend); **Scott Huiras**, Secura Mutual Insurance
(Appleton); **Dave Cristan**, Sentry Insurance (Stevens Point)
(Statewide Implications for Industry)
8. **Peder Larson** – Former Commissioner, Minnesota Pollution Control
Agency (Environmental Clean up Issues)
9. **Connie O'Connell** – Former Wisconsin Insurance Commissioner
(Wisconsin Insurance Market)
Misha Lee – Sentry Insurance (Closing)

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(Review of Legislation and Insurance Coverage) *Melvin*
- ✓ 3. **Laura Foggan** – Attorney, Wiley Rein & Fielding, LLP *Cory G. Lasee*
(Review of Legislation and Insurance Coverage)
- ✓ 4. **David Dybdahl**, CPCU, ARM, MBA – Commercial Insurance Broker,
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① ✓ 5. **Gordon Baldwin** – Evjue-Bascom Emeritus Professor of Law, University
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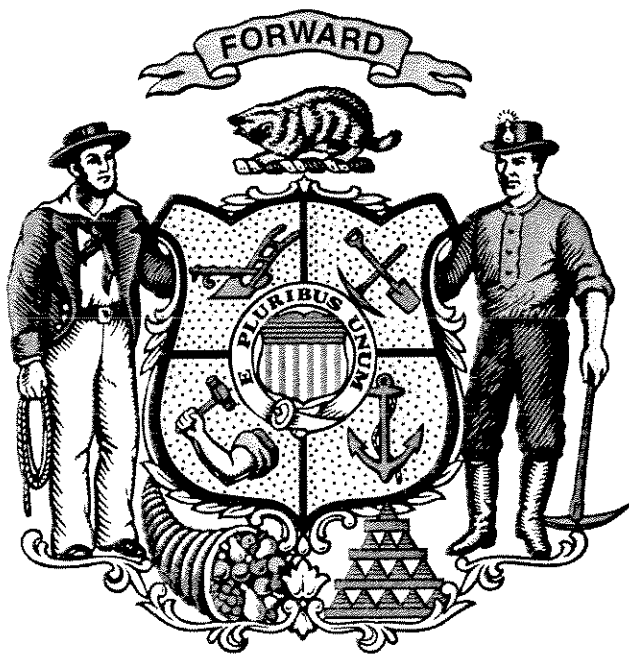
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(Statewide Implications for Industry) *James Friedman!*

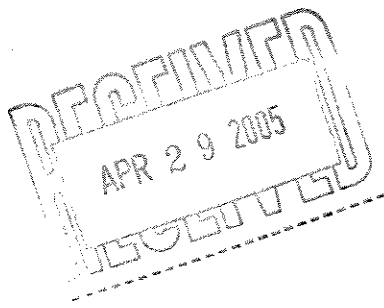
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more to After Chris Herman
✓ **Connie O'Connell** – Former Wisconsin Insurance Commissioner
(Wisconsin Insurance Market)

✓ **Misha Lee** – Sentry Insurance (Closing)





April 25, 2005

Insurance Industry Admits Financial Liability in Fox River Cleanup *Spokesperson contradicts previous positions taken by the insurance industry*

(Madison) – The president of the Wisconsin Insurance Alliance, Eric Englund, admitted for the first time last week that the insurance industry does in fact have certain responsibility for claims related to the cleanup of the Fox River.

Englund made his comments before the Assembly Committee on Insurance during a legislative hearing on AB 222 (Fair Claims Act). Under questioning from Representative Gregg Underheim regarding the Wisconsin Supreme Court case *Johnson Controls v. Employers Ins. of Wausau* (2003) and its impact on insurers, Englund said:

“The insurance industry accepts the mandate of the Wisconsin Supreme Court in the Johnson Controls case,” – Eric Englund

Representative Dean Kaufert, a co-author of the Fair Claims Act, said the contradictory comments by the insurance industry begs the question: “When is the insurance industry going to contribute in the interest of fairness and public good?”

For the record, this is the first time Englund has conceded the insurance industry accepts *any* liability in the Fox River cleanup effort. In a March 31st communiqué to legislators Englund wrote: “The pollution occurred in the 1950s and 1960s **before** pollution damages were envisioned as part of **any** insurance package.”

-more-

Englund's comments directly contradict not only *his* past comments on the issue of liability, but also an active Brown County lawsuit brought by the insurance industry against a Fox Valley paper company that states:

*"There is **no coverage** under insurance contracts issued by (insurers)... for certain environmental liabilities arising from discharges of PCBs into the Fox River..."*
-- Case Number DSCU36 Brown Co. Circuit Court

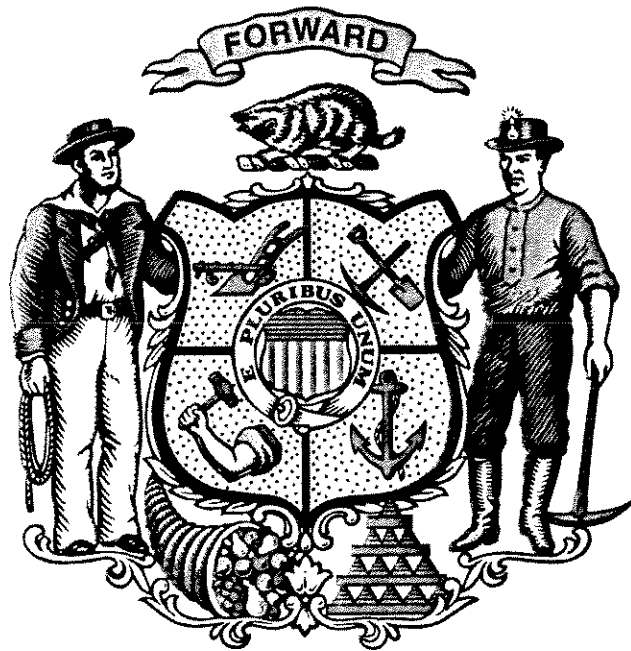
The insurance industry has also repeatedly maintained that the Fair Claims Act will *not* expedite the Fox River cleanup. Eric Englund wrote on March 31, 2005:

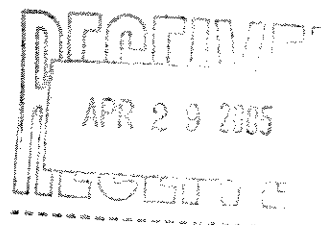
"The Fox River will not get cleaned up faster. (The Fair Claims Act) could even delay the cleanup..."
-- Eric Englund, President of the Wisconsin Insurance Alliance

But here's what Bruce Baker, Wisconsin Department of Natural Resources said in his testimony Thursday, April 21, on the issue of the cleanup and timing:

*"...it is clear that without some resolution of the financial issues, the **cleanup may not be completed in a timely fashion**. Jeopardizing the project at this point will pose a serious threat to human health, and will threaten the investment made by the state, federal and local governments through the taxpayers of Wisconsin."*
-- Bruce Baker, WI Department of Natural Resources

The Fair Claims Act will ensure that insurance companies pay certain claims related to the cleanup of the Fox River, which the insurance industry acknowledges they are liable for.





April 28, 2005

Insurance Industry “Superfund” Strategy Will Be a Disaster for Fox River Cleanup Effort

Wisconsin DNR official warns of potential cleanup delays and cost increases

(MADISON) – The Fox River cleanup effort could be delayed for years if negotiations between papermakers and the insurance industry remain stalled, forcing the U.S. Environmental Protection Agency to list the river as a “Superfund” site, a Wisconsin Department of Natural Resources official warns.

Bruce Baker, Deputy Administrator of the DNR Water Division, told legislators last week at a hearing on the Fair Claims Act (AB222) that the federal government will work cooperatively with paper companies and refrain from using enforcement as a tool as long as papermakers keep the cleanup on schedule.

But resolving the liability and funding issues with the paper companies’ insurers is viewed by federal regulators as critical for the process to keep moving forward.

*“If something isn’t done, and I believe this legislation could potentially do that, I believe we are **not** going to see progress on the cleanup... that is what we are trying to avoid. Our interest is getting the river cleaned up as quickly as possible and we believe if we don’t keep on schedule that we are going to end up in a situation where, across the country, we have seen projects delayed for decades.”*

– Bruce Baker, Wisconsin DNR

The Fair Claims Act will ensure that insurance companies pay certain claims related to the cleanup of the Fox River, which the insurance industry acknowledges liability for.

The insurance industry opposes the bill, and an expert testifying on behalf of the insurance industry signaled the industry's position before the Assembly Committee on Insurance by exhibiting little concern about the Fox River being designated a Superfund site.

"The classic warning sign of a (Superfund) order coming ... is that negotiations have broken down and the feds are starting to get mad. That order can show up in your mail unannounced... these (paper) companies are going to get the order and they will be required to clean this up."

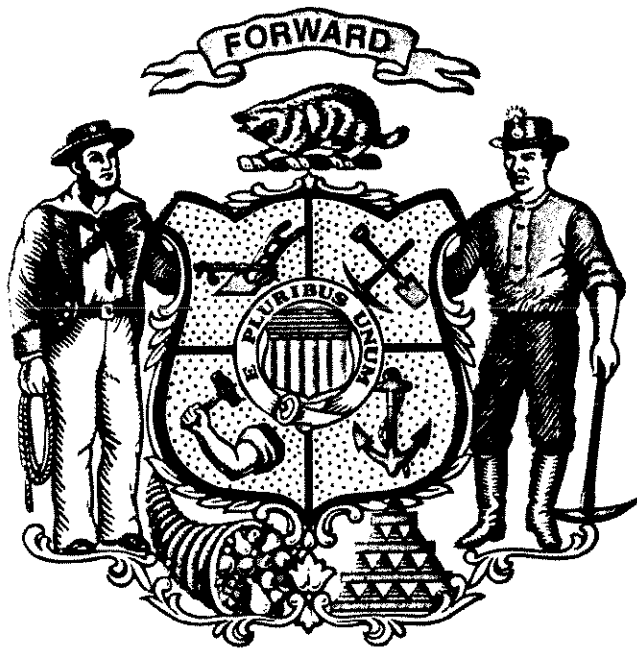
– Peder Larson, Former Commissioner, MN Pollution Control Agency

State Representative Dean Kaufert (R-Neenah) said the final step to allow the Fox River cleanup to be implemented as planned is the completion of a settlement agreement with the papermakers and the feds to fund the cleanup:

"We are at a critical point where negotiations need to be finalized and cleanup designs completed so the project can immediately proceed to implementation. The Fair Claims Act helps expedite this important process,"

–Rep. Dean Kaufert (R-Neenah)

Kaufert and Senator Rob Cowles are co-sponsors of the Fair Claims Act. The Legislature is currently debating the bill.





UPDATE

For Immediate Release

June 2, 2005

Contact: Tim Roby
Fair Claims Coalition
608-251-1952

AB 222??

Farm Discharges to Navigable Waters Not Affected by Fair Claims Act

Critics not playing straight with farm facts

(MADISON) – Opponents of the Fair Claims Act are once again playing games with the facts. The proposed legislation will NOT result in insurance liability for agricultural runoff like manure spills.

The Fair Claims Act does NOT apply to agricultural runoff – it only applies to comprehensive general liability (CGL) policies which provide pollution coverage, and the only CGL policies that provide such coverage were issued *before* 1986.

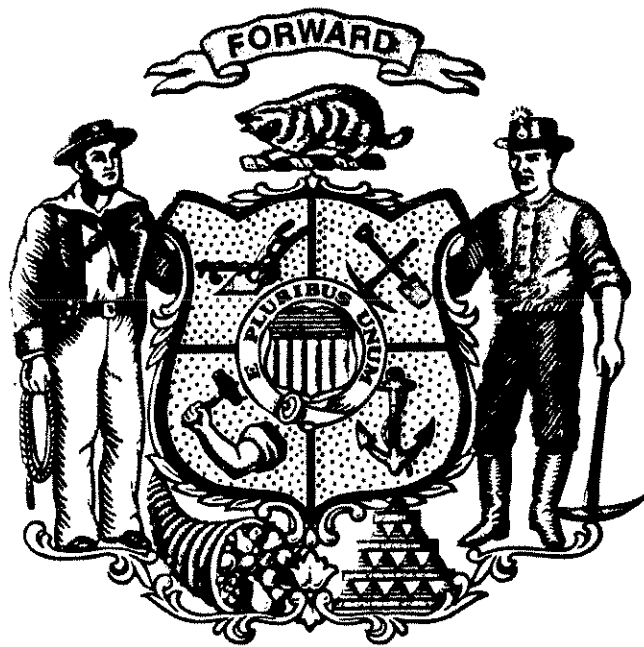
The reason 1986 is such a critical year is the insurance industry adopted what became known as the "absolute" pollution exclusion for CGL policies. **No CGL policy written after 1986 covers pollution – and the Fair Claims Bill does not change that.**

The Fair Claims Act is limited to environmental claims arising from the presence of pollutants on the bed or banks of navigable waters, not any discharge to navigable waters.

The only pollutants found on the bed or banks of navigable waters are those that persist and do not biodegrade. Agricultural pollutants such as manure are biodegradable. Thus, the bill would apply to sites where metals and non-biodegradable chemicals such as PCBs have accumulated in sediments.

The bill **would not apply** to a manure spill, much less one which occurred before 1986, any trace of which has long since vanished.

-END-



Assembly Republican Majority Bill Summary

Contact: Mary Jan Rosenak, Office of Rep. Ann Nischke

AB 222: Brief Description of Bill

Relating to: environmental claims under general liability insurance policies, fees related to removal of contaminated material from a navigable water, and making an appropriation.

By Representatives Kaufert, Huebsch, Ott, Hahn, Hundertmark, Hines, Wood, Friske, Turner, Honadel, Musser, Travis, Towns, Van Roy, Krawczyk, Kreibich, Owens, Bies, Zepnick, Young and Albers; cosponsored by Senators Cowles, A. Lasee and Plale.

Date: June 23, 2005

BACKGROUND

Under current law, there is no provision for allocating environmental insurance claims for damages due to pollution among multiple insurers, across many years, and among many companies.

SUMMARY OF AB 222 (AS AMENDED BY COMMITTEE)

Assembly Bill 222, as amended by Committee, makes liability of insurance companies joint and several, allowing policy holders to claim damages up to the insurer's policy limits for the full amount of the settlement or judgment. The insurer may not reduce coverage because the insured may have other insurance that covers the injury or damage that occurred outside of the policy period. In any lawsuit based on an environmental claim the insured may elect to file suit against fewer than all of the insurers providing coverage for the claim. The bill further provides that any insurer that pays an environmental claim may seek contribution from any other insurer that is potentially liable for the claim (and that has not entered into a good faith settlement of the claim with the insured).

The bill is limited to environmental claims for potential liability for bodily injury or property damage of the bed and banks of navigable water based on "all-sums" policies. Pollutants are solid, liquid, or gaseous irritant or contaminant, including smoke, vapor, soot, fumes acids, alkalies, chemicals, asbestos, petroleum products, lead, products containing lead, and waste.

In addition to the Fox River Valley clean-up related to PCB pollution dating back to the '60's, testimony indicated that there may be other large scale clean-ups that will be impacted.

AMENDMENTS

Assembly Amendment 1 to Assembly Bill 222 [adopted 15-0] excludes homeowner's insurance, farm owner's or farm operator's liability and claims-made policies from "general liability insurance" policies.

FISCAL EFFECT

A fiscal estimate prepared by the DNR indicates that AB 222 will generate \$133,000 in fees. A fiscal estimate prepared by OCI indicates that AB 222 will cost \$194,000 in administration, which might be able to be absorbed within the OCI budget.

PROS

1. Requires an insurance company to pay policy holders under "all sums" and then obtain contributions from other insurance companies later.
2. Limited to navigable waters and builds on existing Wisconsin law, including Justice Prosser's decision in Johnson Controls, which already establishes liability for long term environmental claims.
3. Does not change contract language but limits the insurance company's ability to argue that "all sums" contract language should be rewritten.

CONS

1. Unconstitutional obstruction of contracts.
2. Unfair resolution of contract dispute.
3. No insurance company will underwrite pollution damages in Wisconsin in the future.

SUPPORTERS

Rep. Dean Kaufert, author; Sen. Robert Cowles, lead co-sponsor; Sen. Carol Roessler; Rep. Carol Owens; Jim Kelley, Executive VP and General Counsel, Georgia-Pacific; Paul Kent, Attorney, Anderson & Kent Law Firm; Chris Hermann, Stoel Rives Law Firm; Dennis Delie, United Steelworkers of America USW Pace Union; Gary DeKeyser, United Steelworkers of America Pace Union; Rick Delacenserie, David & Kuelthau Law Firm; Ron Van Den Heuval, Vos Spirit and Tissue Product Technology Corp; Ed Wilusz, Wisconsin Paper Council; Al Toma, Georgia-Pacific; Terrance McGowan, Operating Engineers Local 139; Curt Witynski, League of Wisconsin Municipalities; Phil Uekert, Wisconsin Public Service Corporation; Russel Retzack.

OPPOSITION

Sen. Glenn Grothman; Eric Englund, Wisconsin Insurance Alliance; Michael Cohen, Attorney, Meissner, Tierney, Fisher & Nichols, S.C.; Laura Foggan Attorney, Wiley Rein & Fielding, LLP; David Dybdahl, PCU,ARM, MBA, American Risk Management Resources; Gordon Baldwin, Attorney, Evjue-Bascom Emeritus Professor of Law, University of Wisconsin; James Friedman, Attorney, Godfey and Kahn; Don Haldeman, CEO, Rural Mutual Insurance Company; Terry Wendorf, CEO, Wisconsin Reinsurance Corp; Gerald Mueller, President, Wisconsin Association of Mutual Insurance Companies; Bill Thielmann, General Casualty Insurance Companies; Jim Pauly, West Bend Mutual Insurance; Scott Huiras, Secura Mutual Insurance; Dave Cristan, Sentry Insurance; Peder Larson, Former Commissioner, Minnesota Pollution Control Agency; Connie O'Connell Former Wisconsin Insurance Commissioner; Misha Lee, Sentry Insurance; Louis Schubert, American Family; Melissa Duffy Wisconsin Federation of Cooperatives; Scott Stenger, AIG; Dianna Dean Lorenz, AIG; Sean McManamy, American Insurance Association; Dan Schwartzter, Wisconsin Association of Health Underwriters.

HISTORY

Assembly Bill 222 was introduced on March 16, 2005 and referred to the Assembly Committee on Insurance. A public hearing was held on April 21, 2005. On June 21, 2005, the Committee voted 9-6 [Ballweg, Moulton, Cullen, Lehman, Staskunas, and Molepske(substituting for Berceau) voting "No".] to recommend passage of AB 222 as amended.

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Ed Wilusz — Wisconsin Paper Council;
Al Toma — Georgia-Pacific;
Terrance McGowan, Pewaukee — Operating Engineers Local 139;
Curt Witynski, Madison — League of Wisconsin Municipalities;
Phil Uekert — Wisconsin Public Service Corporation;
Russel Retzack, West Allis — self.

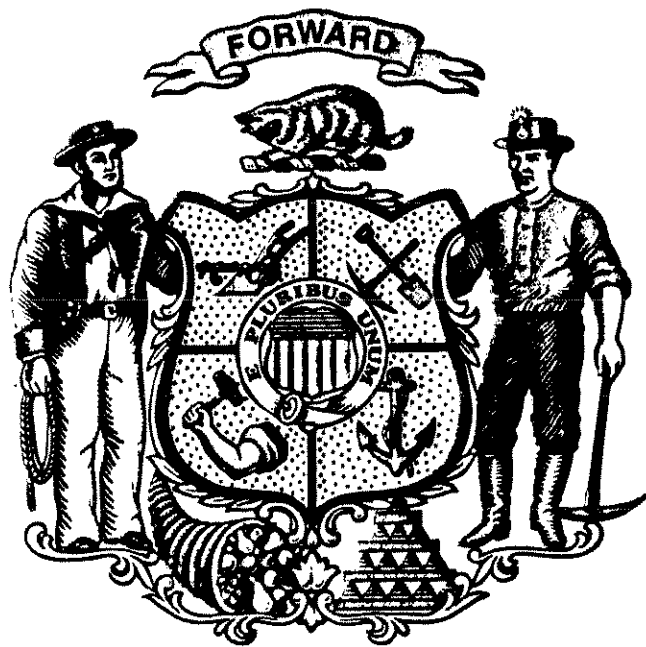
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Misha Lee, Stevens Point — Sentry Insurance;
Louis Schubert, Madison — American Family;
Melissa Duffy — Wisconsin Federation of Cooperatives;
Scott Stenger, Madison — AIG;
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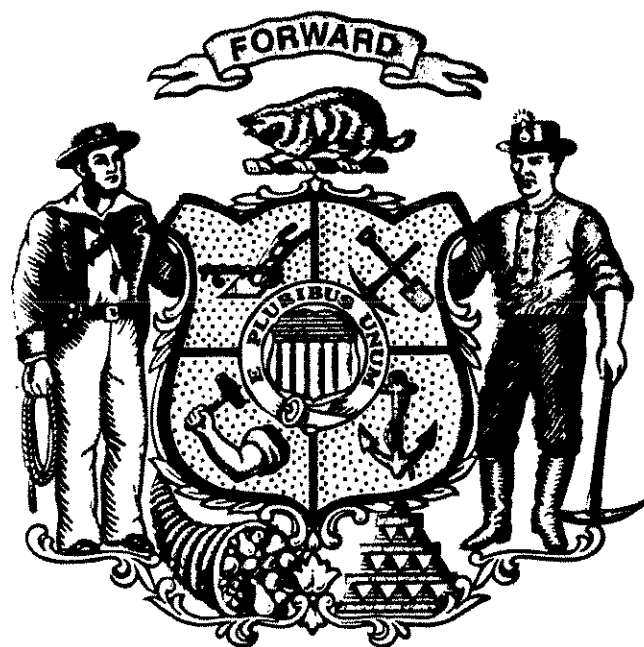
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AB 222 EXECUTIVE SUMMARY

- AB 222 requires an insurance company to pay policy holders, what it agreed to pay under previously existing environmental liability policies, and then obtain contributions from other insurance companies later.
- AB 222 is limited to navigable waters and builds on existing Wisconsin law, including Justice Prosser's decision in Johnson Controls, which already establishes liability for long term environmental claims.
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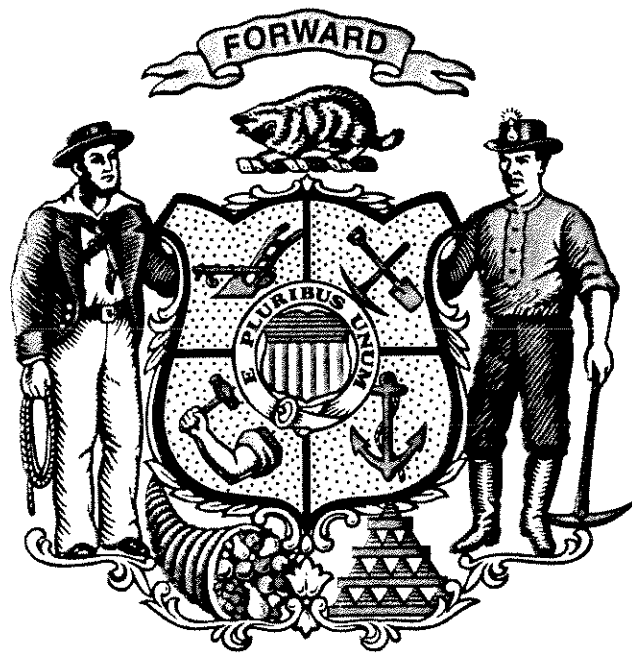
Fair Claims Act Assembly Bill 222

*“For all sums which the insured shall become legally obligated to pay as damages because of property damage to which this insurance applies, caused by an occurrence.”
Standard Form CGL language 1954-1985*

No
Date ??

- The 2003 Supreme Court case, Johnson Controls, opened the door for this issue. It was silent on:
 - Retroactive or prospective application
 - Allocation among multiple insurers
 - Allocation across time
- Application is to beds and banks of all navigable water in Wisconsin.
- The bill specifies (in part)*:
 1. “Pollutant” means any solid, liquid, or gaseous irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalies, chemicals, asbestos, petroleum, products, lead, products containing lead, and waste.
 2. An insurer may not reduce coverage because the injury occurred, in part, outside the policy period.
 3. An insurer may not reduce coverage because other valid or collectible insurance is available to the insured
 4. Each insurer has a duty to defend which is joint and several with other insurers.
 5. Each insurer has a duty to pay the full amount of settlement or judgment for the underlying assertion, which is joint and several.
 6. The insured may designate a policy period, and the policy or policies providing coverage for that period, including primary, umbrella, and excess coverage, shall provide full coverage subject to any applicable limits of liability.
 7. An insurer who pays may seek contribution from any other insurer that is liable or potentially liable for the claim.

* For a full discussion of the bill and its impacts, the Wisconsin Legislative Council memo is posted on my web site www.RepNischke.com, just follow the Insurance Committee links.

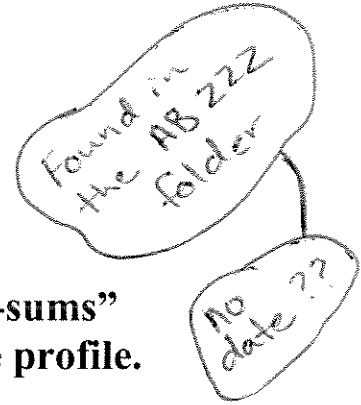


PRESENTATION TO ASSEMBLY INSURANCE
COMMITTEE RE PROPOSED "ALL-SUMS"
ALLOCATION BILL

I. INTRODUCTION AND BACKGROUND

II. COVERAGE CHART

To fully appreciate the numerous flaws in the "all-sums" allocation theory, it is helpful to review a coverage profile.



A. COVERAGE CHART

1. Coverage chart of CGL policies from 1960-1986 - a 26 year period.

2. Mosaic of coverage--includes:

34 insurers

130 policies

Excess of 460M in total limits

For some years, providing up to \$50,500,000 in limits

3. SIRs

all policies are written as excess policies above the insured's self insured retentions ("SIRs").

SIRs range from as low as \$50,000 (1960-1969) to as high as \$500,000 (1985-1986)

The total of SIRs across the 26 year period is 1.8M per occurrence

Every excess policy above the SIRs requires at least SIR to be exhausted before the excess policy applies

4. Insurer A's policy: First layer excess policies

Insurer A's policy has policy limits of \$5M per occurrence above \$100,000 SIR.

Insurer A is insolvent

5. Insurer B's policies: Upper layer excess policies

5 upper layer excess policies issued by Insurer B for the policy period of 1/1/75-1/1/76

These policies are excess to a first layer excess policy issued by Insurer A.

The lowest level policy at issue issued by Insurer B attaches at \$5.1M above the Insured's 100k SIR and the 5M policy of Insurer A.

The policies issued by Insurer B contain provisions which prevent Insurer B's policies from "dropping down"

6. Continuous and Indivisible Property Damage- at least 26 years

Lack of proof

What this means is that the insured cannot prove that a certain amount of property damage took place in any given year so that it can allocate any portion of its claimed damages into any given year across the coverage chart.

B. COVERAGE ATTACHING BELOW THE INSURER B'S POLICIES

- 1. There is a substantial amount of coverage below the 5.1M attachment point of the lowest level policy issued by Insurer B.**

- 2. Across the 26 year period there is a total of**

Over 50 policies

Issued by scores of insurers

With total limits far in excess of 100M

Above 1.8M in per occurrence SIRs

- 3. A couple of these lower layer excess policies bear mention.**

Policies Issued by Insurer C

Policy period of 11/15/81-7/1/83

25M in per occurrence limits

Above 100K SIR

Policy period of 7/1/83-11/15/84

Also 25M in per occurrence limits

Above 100K SIR

C. ALL SUMS THEORY

What the proposed bill would allow the insured to do is to:

shoehorn all of the continuous and indivisible property damage that occurred over the 26 year span into one year (1975-1976)

spike up above all of the lower layer coverage- far in excess of 100M across the 26 year span

and hold the policies issued by Insurer B in that year responsible for the full amount of all damages.

This chart effectively illustrates how inequitable and overreaching the all sums theory is.

E. PRO RATA ALLOCATION

Spread all of the damages equally across the entire period of continuous indivisible property damage

the most equitable method of allocating damages in long tail environmental coverage cases where it is impossible to separate out damages into specific policy periods

III. THERE ARE NUMEROUS REASONS FOR ACCEPTING PRO RATA ALLOCATION AND REJECTING ALL-SUMS ALLOCATION

A. The Insurance Policies Support Pro-Rata Allocation; not All-Sums Allocation.

1. The Policies do not Cover Property Damage Resulting from Exposure to Contaminants Outside their Policy Periods.

a. Policy period

Policies are entered into for a finite policy period, prominently displayed on the face of the policy.

b. Most CGL policies clearly and unequivocally limit coverage to property damage that occurs or takes place “*during the policy period.*”

EXHIBIT

There is nothing ambiguous about this language.

c. Legislating the “all sums” theory would effectively rewrite the Policies (without the insurers obtaining the benefit of additional premiums) to cover property damage *taking place outside the insurer’s stated policy periods*

in this case is some 17 years before the inception of the Insurer B's Policies and some 17 years after Insurer B's policies lapsed

2. Other insurance

Pro-rata allocation is supported by a comparison of the "other insurance" clauses of all other insurance policies at issue.

Since all the other insurance provisions are the same, none of the "excess" other insurance clauses are given priority over the other, and each policy contributes toward the loss on a pro-rata basis.

B. Pro-Rata Allocation is Supported by Wisconsin Case Law; the "All Sums" Theory is not.

1. Several cases have expressly stated that covered property damage must take place during the policy period.

- a. *See Society Insurance v. Town of Franklin*, 2000 WI App 35 ¶¶ 8, 9, 233 Wis. 2d 207, 607 N.W.2d 342 ("An injury occurring during the policy period triggers coverage It is the time of the injury, not the time of the occurrence, that determines which policies are triggered"); *American Family Mut. Ins. Co. v. American Girl, Inc.*, 2004 WI 2 ¶ 75, 268 Wis. 2d. 16, 673**

N.W.2d 65, 84 (“The ‘continuous trigger’ theory generally applies where an *injury* or *damage* occurs over more than one policy period.”) (emphasis added); *Kenefick v. Hitchcock*, 187 Wis. 2d 218, 226, 52 N.W.2d 261 (Ct. App. 1994) (policyholders have the burden of “setting forth specific facts to show that covered bodily injury or property damage occurred during the policy period.”).

b. *Town of Franklin*

limits of all “triggered” insurance policies should be available to contribute to an insured’s liability for environmental contamination

C. “All sums” Allocation has been Rejected and Soundly Criticized by Numerous Courts and Commentators.

1. “All Sums” is Not the Majority View.

10 state high courts (Alabama, Colorado, Connecticut, Kansas, Maryland, Minnesota, New Jersey, New York, Utah and Vermont) and numerous federal and state intermediate appellate courts have ruled in favor of allocation

In contrast, six state high courts have imposed all sums liability on the insurers.

Pro-Rata Time-On-The-Risk Allocation has Been Adopted by Wisconsin's Neighboring States—Minn., ILL., Michigan.

- 2. "All Sums" Allocation Improperly Shoehorns all Long-Term Indivisible Property Damage into One Policy Period and Cannot be Supported by the Reasonable Expectations of the Insured.**
- 3. The "All Sums" Theory Improperly Relieves the Insured of its Responsibility for Deductibles, Self-Insurance and Periods of No Insurance.**
- 4. The "All Sums" Theory Does Not Actually Allocate Damages and Increases Litigation Costs.**

Allocation does not occur until a subsequent contribution action

That action would also include insured because of its settlements with other carriers

It makes no sense to duplicate effort and expense particularly when the allocation method that would be applied would be pro rata allocation based on the other insurance clauses in all of the policies at issue.

- 5. Pro-Rata Allocation has been Recognized as the More Fair and Appropriate Allocation Method.**

Judicially manageable

Easy to apply

Promotes predictability

Reduces incentives to litigate