

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  
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➤ Executive Sessions ... ES  
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➤ Public Hearings ... PH  
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**INFORMATION COLLECTED BY COMMITTEE  
FOR AND AGAINST PROPOSAL ...**

➤ Appointments ... Appt  
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Name:

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**05hr\_ab1073\_AC-In\_pt01**

➤ Miscellaneous ... Misc  
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TO: MEMBERS  
ASSEMBLY INSURANCE COMMITTEE

From: Representative Ann Nischke, Chair  
Committee on Insurance

Date: February 23, 2006

**RE: Results of Executive Session and Public Hearing Monday and Tuesday**

Please find a draft committee report stating the results of the executive session held this morning. This report is subject to further proofing and editing by the Assembly Chief Clerk.

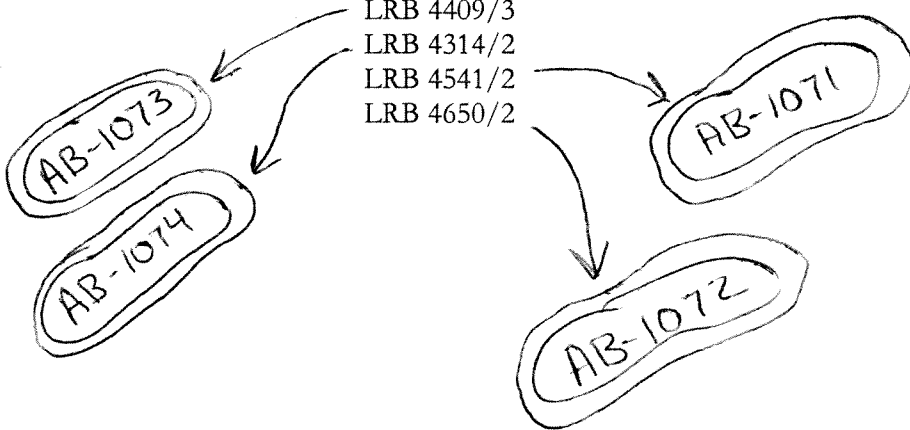
Also, the committee will meet Monday and Tuesday of next week. A notice listing Monday's agenda is attached along with the bill drafts that will be considered. On Tuesday, please expect an executive session on the items head on Monday's public hearing as well as Assembly Bill 1052 that was set aside from today's executive session.

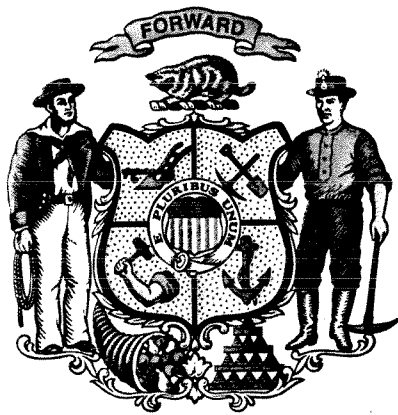
*As discussed at yesterday's public hearing, please submit amendments in advance. Additionally, it is the amendment author's responsibility to distribute the amendment to members and the committee clerk and counsel in advance of the executive session.*

These documents are also available on [www.RepNischke.com](http://www.RepNischke.com) If you have any questions, or require any special accommodations, please contact the committee clerk.

Enclosure: Committee Report, Executive Session, February 23, 2006  
Public Hearing Notice, February 27, 2006

LRB 4409/3  
LRB 4314/2  
LRB 4541/2  
LRB 4650/2







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## MEMORANDUM

**DATE:** April 7, 2006

**TO:** Board of Governors of the Wisconsin Injured Patients and Families Compensation Fund

**FROM:** Pete Wick, Darren Sveom and Bob Sanders

**RE:** 2006-07 FUND FEES

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On March 22, 2006, Wisconsin Assembly Bill 1073 ("AB 1073") was signed into law. According to analysis prepared by the Legislative Reference Bureau:

"Under current law, if a defendant in a medical malpractice case is required to pay noneconomic damages, such as for pain and suffering or for loss of society and companionship, the amount of those damages are limited. The current limit on those damages for each occurrence of medical malpractice is \$445,755, and that limit is adjusted annually for inflation. In *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (2005), the Wisconsin Supreme Court found that limit to be unconstitutional because the limit violated the equal protection provision of the Wisconsin Constitution.

This bill creates a limit on noneconomic damages for each occurrence of medical malpractice of \$750,000. The bill requires the board of governors that approves any fee changes to the Injured Patients and Families Compensation Fund to report to the legislature every two years any suggested changes to these noneconomic damage limits and the reasons why the changes are necessary to meet the intent of the legislature."

Fund management has asked Milliman, Inc. for our thoughts on what impact AB 1073 would have on the Fund fees the Board approved on December 14, 2005. ***Based on the potential long-term impact on the Fund due to the mismatch of the current assessment level and estimated losses, we strongly encourage the Board to maintain the approved fee increase of 25% for Fund Year 2006-2007.***

These fees represent a 25% increase over the current 2005-06 Fund fees. Also at its December 2005 meeting, the Fund Board adopted a motion that for financial reporting, the Fund should maintain a 5% risk margin on the carried reserves. In our report to the Underwriting and Actuarial Committee dated November 22, 2005, we estimated that with a 5% risk margin, the Fund would have a \$52.7 million surplus as of June 30, 2006. This projected surplus of \$52.7 million reflects the impact of the Supreme Court's discussion in the *Ferdon* case.

MEMORANDUM

April 7, 2006

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In our November 22, 2005 report, we estimated the “break-even” funding level (prior to AB 1073) for the July 1, 2006-2007 fiscal year to be \$99.3 million, which represents an increase of 422.2% from the current fee level of \$19 million. We have estimated that the approved assessment level of a 25% increase is approximately 76% below the break-even assessment level prior to AB 1073.

At this time, we have not completed our analysis of AB 1073. However, we have preliminarily assumed the effect of AB 1073 to be a reduction of 10% in the Fund’s future loss costs, if the cap is indexed annually for inflation. The approved assessment level for 2006-07 is \$24 million and the estimated discounted ultimate loss and LAE for Fund year 2006-07 (assuming a 10% savings) is \$89 million. If the assessment level remains at \$24 million, we believe the 2006-07 Fund year will reduce surplus by \$65 million (\$24 - \$89). We still believe as we stated in our November 2005 report that from a long-term perspective, if the Fund does not begin taking significant fee increases, the Fund will potentially accrue a large deficit. To illustrate, the table below shows a scenario where the current assessment level of \$19 million is increased annually by 25% for five years. Over the same time period, we have assumed that the discounted ultimate losses of \$89 million, which reflects an assumed 10% savings on losses due to AB 1073, will increase with trend at 7.0% per year.

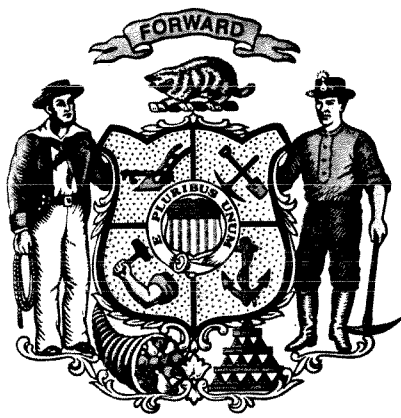
<b>Fund Year</b>	<b>Future Assessments</b>	<b>Discounted Ultimate Loss &amp; LAE</b>	<b>Surplus/(Deficit) Contribution</b>
2005-2006	\$19,000,000	xx	xx
2006-2007	24,000,000	\$89,000,000	\$(65,000,000)
2007-2008	30,000,000	95,000,000	(65,000,000)
2008-2009	38,000,000	102,000,000	(64,000,000)
2009-2010	48,000,000	109,000,000	(61,000,000)
2010-2011	60,000,000	116,000,000	(56,000,000)
<b>Total (2006-2007 through 2010-2011)</b>	<b>\$200,000,000</b>	<b>\$511,000,000</b>	<b>\$(311,000,000)</b>

As shown in the table above, we have estimated that if the Fund were to implement annual fee increases of 25% for each of the next five years, the assessment level for Fund Year 2010-2011 would reach \$60 million. Over the five years, the Fund would collect \$200 million in assessments, but would also accrue a present value liability of \$511 million which would create a \$311 million loss to the Fund. This would be partially offset by the projected surplus of \$53 million as of June 30, 2006, but would result in a projected deficit of \$250 million as of June 30, 2011.

PGW/DLS/RLS/bas

cc: Theresa Wedekind

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State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor  
Jorge Gomez, Commissioner

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DATE: April 7, 2006  
TO: Injured Patients & Families Compensation Fund Board of Governors  
FROM: Theresa Wedekind  
SUBJECT: 2007 Fund Fees

AB 1073

As you know the Governor signed into law Act 183 which became effective April 6, 2006, establishing a new cap on non-economic damages at \$750,000. This cap will affect only those claims which occur on or after April 6, 2006.

To address any concerns or questions regarding the continuing need for the Board approved 25% increase for fiscal year 2007, I have prepared the attached information for your review. This issue will be included for discussion on the agenda for both the Finance Committee meeting next month and the Board meeting in June.

Injured Patients & Families Compensation Fund  
Factors/Issues to take into consideration in reviewing the Board approved 25% Increase in Fees  
For Fiscal Year 2007

Factors relating to the increase and subsequent analysis:

1. July 2005 the Supreme Court declared the cap on non-economic damages to be unconstitutional in the Ferdon case. This voided the cap that had been in place since 1995. Reserves were adjusted to reflect the loss of the cap. The signing of Act 183 results in a new cap on non-economic damages in the amount of \$750,000. This cap will apply only to those claims with incidents dates on or after the effective of this legislation. For outstanding claims, both reported and unreported, with incident dates between 1991 and April 6, 2006, there is no cap on non-economic damages.
2. The December 2005 the Supreme Court issued a ruling in the Haferman case which effectively eliminated the statute of limitations for filing by or on behalf of a developmentally disabled minor. This required the Fund to incorporate into its loss reserves the potential for a claim to be filed more than 20 years after an incident that may give rise to a claim involving such a minor. There is current legislation pending – awaiting action by the Governor – that will address this. However, there is some uncertainty as to whether the Governor will sign it or veto.
3. On April 5, 2006, the state Supreme Court heard oral arguments on the Bartholomew case which seeks to overturn the Maurin decision. In the Maurin decision a few years ago, the Supreme Court upheld the wrongful death cap and disallowed the stacking of caps. The Court could uphold Maurin, overturn the ruling in total, or overturn the ruling in part. Based upon the questions that were posed by the Justice's during oral arguments, as well as comments made, it is reasonable to think that the Court is leaning towards at least a partial overturn of Maurin by allowing the stacking of caps.
4. For this current fiscal year, the first year of claims experience after the previous cap was declared unconstitutional, through March we have paid \$16.9 million. There is an additional \$7,300,000 jury verdict on the Greenfield case in which we are accruing interest at a rate of \$2400 per day. In addition, the Claims Committee will be reviewing 2 large cases for settlement authority. The reserves on these two cases are \$6.5 and \$11 million. There is an additional case in which the primary has inquired as to the procedure for tendering their \$1m limit – this case has a Fund reserve of \$5mm. If these case are all resolved prior to the end of June the Fund will have a total claims paid for fiscal year 2006 between \$45 and \$50 million, a year in which we collected only \$18 million in assessments.
5. Milliman's September 2005 report to the Actuarial Committee included the following information:

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The indicated break-even fee level was an increase of 190% for this current fiscal year (2006).

The Board approved a 30% decrease. This was in keeping with the Board's policy of using any surplus in the Fund to reduce assessments.

The current fees (fiscal 2006) are 75.9% below the break-even level.

Approximately a 25% increase is due to the overturning of the non-economic damages cap.

Page D2

The indicated break-even fee level for fiscal year 2007 is an increase of 422% - Actuarially this means that in order to collect enough assessments to pay all the claims that arise from incidents occurring during fiscal year 2007, the fund would need to collect \$99.3 million. Approximately 25% of



the indicated fee increase is directly attributable to the overturning of the cap. The 25% increase approved by the Board will result in the collection of approximately \$22.5 million. This amount is still well below the indicated break even level even with regard to the new cap.

(These reports were distributed to all Board members in December. If you would like another copy, please let us know)

6. There has been an overall decrease in assessments from 1999 through 2006 of 68.4%, which include decrease in each year except one. (See separate fee schedule included) Actuarial projections (Exhibit G2 of Milliman's report) show deficits by accident year for each of the last 5 years. This means that ultimately, many years down the road when all the claims for these accidents years are paid, there will not have been enough assessments collected annually to cover the claims incurred. This trend has the potential to put the Fund into the undesirable position of having a significant deficit.

#### Summary

The new cap does not effect any claims resulting from an incident that occurred between 1991 and the effective date of the new cap; approximately  $\frac{3}{4}$  the way through the current fiscal year. The assessments/fees that were collected in the years 1995-2006 were based upon actuarial studies that included a cap on non-economic damages. This 25% increase will still result in the collection of assessments well below indicated break even levels even with the new cap.

When the Board reduced rates in the early 2000s, it was expected that increases would be needed in the future to address these shortfalls.

In December 2006 the Board will review current rates and new actuarial projections and made a determination of rates for fiscal year 2008 which will take into consideration the enactment of the new cap on non-economic damages.

- A 314.4% implied increase due to the July 1, 2005 fee change. The indicated July 1, 2005 break-even fee level was an increase of 190.1%, while the adopted fee change was a 30.0% decrease. Thus, the current fees are 75.9% below the break-even level;
- An annual loss cost trend of 7.0%;
- Approximately a 25% increase due to the overturning of the cap on non-economic damages;  
and
- Continued favorable reserve development on prior Fund years which serve as the basis for our forecast for 2006-07.

As previously noted, we have estimated that the current assessment level is approximately 76% below the indicated break-even assessment level. The current assessment level is approximately \$19 million and the discounted ultimate loss and LAE for Fund Year 2006-2007 is approximately \$99 million. If the assessment level remains at \$19 million, we believe the 2006-2007 Fund Year will reduce the estimated surplus by \$80 million (\$19 - \$99). From a long-term perspective, we believe that if the Fund does not begin taking significant fee increases, that the Fund will potentially accrue a large deficit. To illustrate the situation, we have created a scenario where the annual assessment level of \$19 million is increased by 25% for five years. Over the same time period, we have assumed that the discounted ultimate losses of \$99 million will increase with trend at 7.0% per year.

- Projected expenses of \$42,000 for the risk management program for the July 1, 2006-2007 fiscal year. The comparable assumption in our analysis of the July 1, 2005 fees was \$42,000.

With these assumptions, Exhibit D1 develops our indication of the assessment level necessary to fund the expected July 1, 2006-2007 claim costs. The indication is for an increase of 422.2% in the current Fund fees. This would increase the Fund's current assessment income of \$19.0 million to \$99.3 million for the July 1, 2006-2007 fiscal year.

For reference, the indicated break-even funding level of \$99.3 million reflects a 30.1% increase over our estimate of the break-even funding level for the July 1, 2005-2006 fiscal year of \$76.3 million (as provided to the Committee in their meeting of November 30, 2004). This change is primarily driven by the overturning of the cap in non-economic damages, which had the impact of increasing the indicated fee level by about 25%.

For reference, the table below shows a ten-year history of Fund fee level changes:

<b>Effective Date</b>	<b>Overall Fund Fee Level Changes</b>
July 1, 1996	+10.0
July 1, 1997	(17.7)
July 1, 1998	0.0
July 1, 1999	(7.0)
July 1, 2000	(25.0)
July 1, 2001	(20.0)
July 1, 2002	(5.0)
July 1, 2003	+5.0
July 1, 2004	(20.0)
July 1, 2005	(30.0)

Exhibit D2 provides the historical annual Fund fees by Fund year since inception.

WISCONSIN INJURED PATIENTS AND FAMILIES COMPENSATION FUND

Summary of Revenue and Expenses  
Inception Through June 30, 2005

Table with columns for years 1975-76 through 2004-05 and a TOTAL column. Rows include Revenue (Ultimate Loss & LAE, Assessment Income, Investment Income, Other Income, Funds Contributed) and Expenses (Ultimate Loss & LAE, Funds Held on Behalf, Net Paid Loss & LAE Reserves, Offset for Investment Income, Discounted Unpaid Claim Liabilities, Administrative Costs, Fund Year Surplus/Deficit).

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