



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 235
[2017 Assembly Bill 773]

**Civil Procedure, Unclaimed
Property, and Interest on
Insurance Payments**

2017 Wisconsin Act 235 makes certain changes relating to civil discovery, class action lawsuits, audits on unclaimed property, interest on overdue payments by insurers, and statutes of limitations.

AUDITS ON UNCLAIMED PROPERTY

Prior law, unaffected by the Act, authorizes the Department of Revenue (DOR) to examine the records of any person to determine whether the person has complied with the unclaimed property law. If an examination of a person's records results in the disclosure of property reportable and deliverable, DOR may assess certain costs and penalties.

The Act prohibits DOR from entering into a contract or other agreement to allow a person to engage in an audit on a contingent fee basis of another person's documents or records as part of an effort to administer the unclaimed property law or purchase information or documents arising from the audit. An exception exists for circumstances in which the person whose documents or records are audited is not domiciled in this state. In those cases, DOR may enter into a contract or agreement on a contingent fee basis if the amount of the contingent fee does not exceed 12% of the total amount of the property reportable and deliverable that is disclosed by the audit.

Also, under the Act, DOR may not enter into a contract as part of an effort to administer the unclaimed property law that allows a person that is engaging in an audit of another person's documents or records to use statistical sampling to estimate the other person's liability unless the other person consents to the use of an estimate.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

INTEREST RATE ON OVERDUE INSURANCE PAYMENTS

Under state law, unless otherwise provided by law, an insurer must pay insurance claims within 30 days after the insurer is furnished written notice of the fact of a covered loss and loss amount.

Under prior law, overdue payments must bear simple interest at the rate of 12 % per year. The Act changes the interest rate applicable to overdue payments to 7.5% per year.

CLASS ACTIONS

The Act requires a court to provide a written decision allowing maintenance of a class action and further requires appellate courts to hear timely appeals on orders granting or denying class action certifications.

DISCOVERY

Scope of Discovery

The Act creates a general scope provision governing discovery, which aligns closely with the federal rules of civil procedure. Specifically, under the Act, parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

The Act further requires the court, upon the motion of any party, to limit the frequency or extent of discovery if the court determines that one of the following applies:

- The discovery sought is cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.
- The burden or expense of the proposed discovery outweighs its likely benefit or is not proportional to the claims and defenses at issue considering the needs of the case, the amount in controversy, the parties' resources, the complexity and importance of the issue at stake in the action, and the importance of discovery in resolving the issues.

The Act also allows the court, when ruling on a motion for a protective order, to order that discovery may be had only on specified terms and conditions, including an allocation of expenses.

Mandatory Disclosures

The Act requires a party to provide to the other parties any agreement in which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action. Unless otherwise stipulated or ordered by the court, this disclosure is required without awaiting a discovery request.

Automatic Stay of Discovery

The Act provides that upon the filing of a motion to dismiss, a motion for judgment on the pleadings, or a motion for more definite statement, all discovery and other proceedings must be stayed for a period of 180 days after the filing of the motion or until the court's ruling on the motion, whichever is sooner, unless the court finds good cause upon the motion of any party that particularized discovery is necessary.

Production of Certain Categories of Electronically Stored Information

The Act provides that, absent a showing by the moving party of substantial need and good cause, subject to an assessment of whether the burden of the proposed discovery outweighs its likely benefit, a party is not required to provide discovery of any of the following categories of electronically stored information:

- Data that cannot be retrieved without substantial additional programming or without transforming it into another form before search and retrieval can be achieved.
- Backup data that are substantially duplicative of data that are more accessible elsewhere.
- Legacy data remaining from obsolete systems that are unintelligible on successor systems.
- Any other data that are not available to the producing party in the ordinary course of business and that the party identifies as not reasonably accessible because of undue burden or cost. In response to a motion to compel discovery or for a protective order, the party from whom discovery is sought is required to show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may generally order discovery from such sources only if the requesting party shows good cause.

Limitations on Discovery Methods

The Act creates the following limitations on the specified methods of discovery, unless otherwise stipulated or ordered by the court:

- Twenty-five interrogatories, including all subparts.
- Ten depositions, none of which may exceed seven hours in duration.
- Requests for production of documents for a reasonable time period of not more than five years prior to the accrual of the cause of action, except this limitation does not apply to requests for patient health care records, vocational records, educational records, or any other similar records.

STATUTES OF LIMITATIONS

Reduction of Certain Periods

The Act reduces the statute of limitations period from six to three years for the following types of actions:

- An action to recover damages for an injury to the character or rights of another, not arising on contract.
- An action for relief on the ground of fraud, except for certain claims for which there is evidence of fraud concerning warranty reimbursements or promotional allowances under laws governing motor vehicle dealers.
- An action upon a liability created by statute, when a different limitation is not prescribed by law.

Statute of Repose

Prior law, unaffected by the Act, provides that, subject to certain exceptions, no cause of action may accrue and no action may be commenced after the end of the “exposure period” against the owner or occupier of property or against any person involved in the improvement to real property to recover damages for any injuries arising out of certain types of acts.

Prior law defined the “exposure period” as the 10 years immediately following the date of substantial completion of the improvement to real property. However, prior law also provided that if, as a result of a deficiency or defect in an improvement to real property, a person sustains damages during the period beginning on the first day of the eighth year and ending on the last day of the 10th year after the substantial completion of the improvement to real property, the time for commencing the action is extended for three years after the date on which the damages occurred.

The Act reduces the exposure period from 10 to seven years, and allows for a three-year extension if a person sustains damages during the period beginning on the first day of the fifth year and ending on the last day of the seventh year after the substantial completion of the improvement to real property.

APPLICABILITY

The provisions concerning unclaimed property first apply to a contract or agreement entered into, renewed, or modified on April 5, 2018. The provisions concerning civil discovery first apply to actions that are filed on July 1, 2018.

Effective date: Generally, 2017 Wisconsin Act 235 went into effect on April 5, 2018. However, the Act provides an effective date of July 1, 2018, for the provision concerning class actions.

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