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Wisconsin Omnibus Tort Bill

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Posted By: Heidi L. Vogt

Practice Area: Medical Malpractice Defense & Product Liability & Litigation and Risk Management

On Thursday, January 27, 2011, Governor Walker signed into law Wisconsin's Omnibus Tort Bill. The new laws will take effect no later than February 11, 2011 – 11 business days after January 27, 2011.

- **Strict Product Liability (Wis. Stat. § 895.047):** Sellers and distributors of defective products are not subject to liability unless: (a) they assume, through contract, a duty of the manufacturer; or (b) the manufacturer and its insurer are not subject to service of process in Wisconsin; or (c) a court concludes that a judgment against the product manufacturer or its insurer could not be enforced. Further, the principles of comparative negligence embodied in Wis. Stat. § 895.045 now apply to strict product liability claims.
- **Common-Law Risk Contribution Doctrine Limited (Wis. Stat. §895.046):** With certain exceptions, when a claimant alleges claims of design defect or failure to warn, a product defendant may be held liable only if the claimant proves—in addition to other elements required—which allegedly caused the injury. If the claimant cannot meet this proof requirement, a product defendant may be held liable only if: no other lawful process exists for the claimant to seek redress; the claimant's injury could be caused only by a product that is chemically and physically identical to the allegedly offending product; the defendant manufactured, distributed, sold, or promoted a complete integrated product; and the claimant names as defendants the manufacturers that collectively manufactured 80% of the chemically and physically identical products sold in Wisconsin during the relevant production period.
- **Punitive Damage Caps (Wis. Stat. § 895.043(6)):** Punitive damages may not exceed twice the amount of compensatory damages recovered or $200,000, whichever is greater. However, the cap does not apply to drunk drivers. In addition, the cap does not apply to cases already pending at the time of the effective date.
- **Non-Economic Damage Caps for "Long-Term Care Providers" (Wis. Stat. § 893.555):** Non-economic damages for bodily injury arising from the care or treatment (or any omission) by a "long-term care provider"—which includes nursing homes, hospice centers, and assisted living centers—are capped at $750,000.
- **Move Toward Daubert Standard of Expert Testimony (Wis. Stat. § 907.02(1)):** Expert testimony isnow limited to testimony that is: (a) based on sufficient facts or data; (b) the product of reliable principles and methods; and (c) based on the witness' applying those principles and methods to the facts.
- **Mandatory Monetary Sanctions for Frivolous Claims or Filings (Wis. Stat. § 895.044):** Courts now must award as sanction actual costs, including reasonable attorney fees, when they find that a party or its attorney knew that an action it filed or continued was frivolous and does not correct the improper conduct within 21 days.

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