



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

Officers & Members

President - Bill Smith
*National Federation of
Independent Business*

Vice President -
Jerry Deschane
*Wisconsin Builders
Association*

Treasurer -
Andrew Franken
Wisconsin Ins. Alliance

Secretary – Scott Manley
*Wisconsin Manufacturers
and Commerce*

John Mielke
*Associated Builders
& Contractors*

James Boullion
*Associated General
Contractors of Wisconsin*

Beata Kalies
Electric Cooperatives

Gary Manke
*Midwest Equipment
Dealers Association*

Nickolas George
*Midwest Food Processors
Association*

William Sepic
*Wisconsin Automobile &
Truck Dealers Association*

Laurie Fischer
*Wisconsin Dairy Business
Association*

Bryce Tolefree
Wisconsin Defense Counsel

Peter Thillman
*Wisconsin Economic
Development Association*

Eric Borgerding
*Wisconsin Hospital
Association Inc.*

Mark Grapentine
Wisconsin Medical Society

Thomas Howells
*Wisconsin Motor Carriers
Association*

Matthew Hauser
*Wisconsin Petroleum
Marketers & Convenience
Store Association*

Edward Lump
*Wisconsin Restaurant
Association*

Written Testimony of Bill McCollum, SNR Denton

Submitted on Behalf of the Wisconsin Civil Justice Council

and the U.S. Chamber Institute for Legal Reform

In Support of AB 27/SB 19

Wisconsin Senate Committee on Judiciary

April 11, 2013

Representative Jim Ott and members of the of the Wisconsin Assembly Judiciary Committee, on behalf of the Wisconsin Civil Justice Council (WCJC) and the U.S. Chamber Institute for Legal Reform (ILR), thank you for allowing me the privilege to submit written testimony on some very important issues facing our legal system.

State attorneys general once held relatively low-profile roles in state government, serving as legal advisers for governors, state agencies and local governments. Over the past decade, there has been a dramatic transformation in the manner in which state attorneys general enforce their traditional consumer protection and antitrust enforcement powers. Nationwide, attorneys general are actively working to expand their subject matter jurisdiction into areas such as environmental policy and financial services regulation. State officials are stepping up their regulation of the business community and are well on their way to displacing federal authorities as the nation's chief consumer protection watchdogs.

As states become more engaged in major consumer protection issues, the ILR has noticed a willingness by states to hire private plaintiff's firms to pursue litigation on behalf of the state. It should be noted that in Wisconsin, the authority to enter into legal contracts with outside counsel resides with the Governor and the Department of Administration. As payment, these attorneys receive a contingency fee, which is a percentage of whatever amount is recovered on behalf of the taxpayer. In the past, some private law firms received excessively high fees in relation to the amount of work they did on behalf of the state. For example, in Wisconsin, private plaintiff attorneys hired by the State in the late 1990s received approximately \$75 million representing the State in the tobacco litigation settlement. (The private plaintiff attorneys originally sought \$847 million before ultimately agreeing to \$75 million.) *The Wisconsin State Journal, June 22nd, 1999.*

In addition to excessive fees, there is a substantial risk of "pay to play" schemes that may appear when political contributions from plaintiffs firms are traded for contingent fee contracts. At the very least, use of such counsel without the proper safeguards can give the appearance of impropriety and undermine confidence in our legal system.

Governor Scott Walker and Attorney General J.B. Van Hollen have been a model of transparency and accountability during their respective times in office and have not engaged in the type of private attorney contracting with contingency fee counsel I have described. Past history and experiences in other states demonstrate that future Governors and Attorneys General in Wisconsin may not have the same restraint, judgment and integrity that Governor Walker and General Van Hollen have demonstrated. For this reason, we urge you to enact AB 27 and SB 19.

The State should only enter into private attorney contingency fee contracts when it does not have the expertise or ability to handle a matter and the State cannot locate appropriate outside counsel to handle the legal matter on an hourly fee basis. Then, only with complete transparency, a competitive bid process and caps on attorneys' fees, should contingency fee counsel be retained.

AB 27 by Representative Mike Kuglitsch and SB 19 by Senator Glenn Grothman require the state contracting agency to make a written determination that contingency fee counsel is cost effective and in the public interest. The legislation promotes competitive bidding by requiring the contracting agency to request proposals from private counsel, with certain exceptions. In order to rein in excessive attorneys' fees, the bill sets tiers for contingency fees as a percent of recovered amounts ranging from 25% to 5%. To ensure that the private plaintiff's firm is acting in the best interests of the state, and not in the interest of their own profit, the legislation requires government attorneys to maintain control of case and any settlement decisions. Transparency is achieved through the requirement that a copy of the executed fee contract be posted online. In addition, the private attorney must maintain time records and keep detailed records of expenses, disbursements, etc. for 4 years after the contract terminates.

Anytime an office hires private contingency fee counsel on behalf of the State, the State owes it to the taxpayers to be transparent and accountable in how and why they do so. They should be able to articulate and demonstrate the value that outside counsel is providing to the State and the taxpayers.

Conclusion

AB 27 and SB 19 were introduced to promote the principles of transparency and accountability in Wisconsin's private attorney contracting process. The bills are based on model legislation known as Transparency in Private Attorney Contracting (TIPAC). TIPAC or related bills have already been introduced in over a dozen state legislatures and successfully implemented in states like Arizona, Florida, Indiana, Iowa, and Mississippi. I urge this committee to join these states and protect the public interest by passing AB 27 and SB 19.



TO: Members of the Senate Judiciary & Labor Committee

FROM: Scott Manley
Vice President of Government Relations
Wisconsin Manufacturers & Commerce

DATE: April 11, 2013

RE: Support for Senate Bill 19

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to provide input on Senate Bill 19, which would create a formal process for the state to select outside legal counsel for use on a contingency fee basis.

WMC is the state's largest business trade association, with over 3,500 members in the manufacturing, service, health care, retail, energy, banking and insurance sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business, and toward that end, we support legislation encouraging a legal environment that provides fairness under the law and the application of reasonable and clear standards. With those principles in mind, we respectfully request your support of Senate Bill 19.

The state of Wisconsin presently has no formal process for selecting outside legal counsel used on a contingency fee basis. Senate Bill 19 would establish a robust process for selecting private attorneys under this basis and also place reasonable limits on these arrangements.

Under Senate Bill 19, the Governor would need to make a written determination on the need for the state to retain outside counsel on a contingency fee basis. Such a determination would need to prove that such a contract would be cost-effective for the taxpayer and be in the public interest.

For any contingency fee arraignment entered into, state attorneys would maintain control of the litigation. This would include state attorneys participating in any settlement conferences.

The legislation also calls for tiered limits on the amount of contingency fees that could be paid, based on the amount of the recovery. The maximum contingency fee paid would be capped at \$30 million.

501 East Washington Avenue, Madison, WI 53703-2914 P.O. Box 352, Madison, WI 53701-0352

Phone (608) 258-3400 • Fax (608) 258-3413 • www.wmc.org

Founded in 1911, Wisconsin Manufacturers & Commerce is the state's chamber of commerce and largest business trade association representing more than 3,500 employers of every size and from every sector of the economy.

The bill provides transparency by requiring a copy of the contingency fee contract and the amount of any contingency fees paid to be posted to the Governor's website.

Lastly, the Governor is required to submit to the Legislature an annual report of all contingency fee contracts entered into by the state, the attorneys and firm with whom the contracts have been signed, and information on the legal matter under contract.

Senate Bill 19 will extend Wisconsin's culture of open governance into an area that has eluded transparency in the past. Thank you for your thoughtful consideration of our support for Senate Bill 19.



Wisconsin

**Statement Before the
Senate Committee on Judiciary and Labor**

By

**Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin Chapter**

**Thursday, April 11, 2013
Senate Bill 19**

Mr. Chairman, members of the Committee, I have a brief statement to make on behalf of the members of NFIB.

The issue before the committee is not whether the Governor or Department of Justice or some other entity should have the authority to hire outside legal counsel, of course they should have that authority. This bill is not about authority, but it is about accountability.

The issue, Mr. Chairman, is whether there should be greater transparency available to the public about contingency fee contracts between the state and private attorneys.

NFIB supports Senate Bill 19 because it will protect taxpayers by placing reasonable, yet generous limits on attorney fees, and it provides the Department of Justice with the responsibility and authority to monitor the terms and performance required under the private attorney contracts. It requires government attorneys to participate in all settlement negotiations and must also retain control of the litigation. The taxpayers of Wisconsin deserve no less.

A couple weeks ago, the Department of Justice invited everyone to join in a celebration of Wisconsin's sunshine laws. "These laws," the Attorney General said, "provide broad access to information about how our state and local government operate. The resulting public oversight forms an important foundation of our participating democracy."

Statement Before the Senate Committee on Judiciary and Labor
Thursday, April 11, 2013
Page Two

We agree, public oversight is an important foundation of our participatory democracy. We believe the transparency provisions of Assembly Bill 27 will further strengthen that foundation by ensuring government attorneys retain control of the litigation, and that consumers, victims, and taxpayers are treated fairly and responsibly.

The opponents argue this legislation will expose plaintiff lawyers to economic uncertainty and financial risk.

Small business owners understand the reality and uncertainty of financial risk. Everyday small business owners take some risk when they borrow money to invest in a piece of equipment, purchase inventory, or hire another worker.

The security for the economic risk these entrepreneurs take is often secured by their home, or family savings, and failure can be devastating, and there won't be millions of dollars available even if they are enormously successful.

On behalf of our states small business community, I urge members of the committee to support passage of Senate Bill 19.

Thank you.